

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/401. Contract between publisher and author.

## **PRESS, PRINTING AND PUBLISHING (**

### **1. PUBLISHING AND PUBLICATIONS**

#### **(1) THE PERSONS AND RELATIONSHIPS**

##### **(i) Publishers and Authors**

##### **401. Contract between publisher and author.**

Traditionally, a publisher was a person who carried on the business of issuing books, magazines or other printed work for sale or distribution to the public<sup>1</sup>. The expression may now also include a person who disseminates to the public, or makes available for access by the public, via an electronic medium (such as DVD-ROM<sup>2</sup>, the Internet<sup>3</sup> or other on-line network<sup>4</sup>).

An author is a creator of a literary or artistic work<sup>5</sup>. The distinction between publisher and author has become obscured as the Internet makes potential publishers of everyone with access to it. Therefore, an author can now be a publisher too.

The relationship between publisher and author is determined by the contract between them. Sometimes the author employs a publisher to publish his works, sometimes the publisher purchases the work from the author, sometimes the publication is a matter of joint venture between them, and at other times the author is his own publisher. The most usual form of traditional contract is that in which the publisher undertakes to bear the whole of the cost of the publication, including printing and advertising, and to pay to the author either a percentage of the profits or a fixed sum or royalty on each copy sold<sup>6</sup>.

What rights pass from author to publisher will depend both on industry practice and individual negotiation. Trade publishers usually acquire a licence under copyright for a period up to the full period of copyright<sup>7</sup>. Scientific, technical, medical and newspaper publishers usually seek an assignment of copyright<sup>8</sup>. The extent of the rights acquired will vary. Trade practice is not yet established in the area of electronic publishing, although it is conceived that new on-line media publishers may be wanting to acquire worldwide rights because of the nature of electronic medium. If they are unable to acquire such rights, they may seek to limit the geographical area from which the on-line service can be accessed, or may apply some mechanical or electronic limitations<sup>9</sup>.

If, by the contract, the publisher is liable to bear all the expenses of publication, he is entitled to fix the price of the book, unless the contract otherwise provides<sup>10</sup>.

A clause in a contract by which the author agrees not to write for anyone else may be a valid covenant<sup>11</sup> despite the fact that it is in restraint of trade<sup>12</sup>.

By a series of agreements negotiated with different publishers, the Society of Authors<sup>13</sup> has established a number of minimum term agreements with publishers, which such publishers will incorporate into their contracts with authors who are members of the Society.

In accordance with the Public Lending Right Scheme<sup>14</sup> prepared and brought into force by the Secretary of State<sup>15</sup>, authors have a right, known as a 'public lending right'<sup>16</sup> to receive from a central fund<sup>17</sup> payments in respect of such of their books as are lent out to the public by local library authorities<sup>18</sup> in the United Kingdom<sup>19</sup>.

1 See *McFarlane v Hulton* [1899] 1 Ch 884 at 889. If a publisher publishes a series of books and uses a name to describe the series or his publications he may, it seems, protect his rights by registering the name as a trade mark: see *Pan Books Ltd v World Distributors (Manchester) Ltd* [1957] RPC 366. See also PARA 439 post; and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 339. For the meaning of 'publishing' generally see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 39. As to domain names see PARA 416 note 15 post.

2 DVD-ROM is the commonly accepted abbreviation for a Digital Versatile Disc, Read Only Memory. CD-ROM which is the commonly accepted abbreviation for a Compact Disc, Read Only Memory is now being replaced as a standard by DVD-ROM.

3 As to the Internet see PARA 416 post.

4 As to on-line network see PARA 416 post.

5 For the meaning of 'author' for the purposes of the Copyright, Designs and Patents Act 1988 see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 110.

6 Where the agreement between the publisher and the author contains no express terms as to the copyright, if the consideration is payment to the author of royalties or a share of the profits, instead of a sum of money paid down, the inference is that the copyright is not assigned, but that a sole and exclusive licence is conferred upon the publisher: see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 180. As to creation of an oral contract by references only to 'commitment' and 'a fair royalty' see *Malcolm v Chancellor, Masters and Scholars of the University of Oxford* [1994] EMLR 17, CA. As to copyright and analogous rights generally see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 3 et seq.

7 Trade publishers may acquire what are known as 'volume form' rights plus a series of subsidiary rights. As to rights with regard to a manuscript or other work see PARAS 409, 456 post. As to copyright see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 54-454.

8 Newspaper publishers may look to acquire copyright which is limited to publication in newspapers.

9 As to publishing on the Internet see PARA 416 post.

10 *Reade v Bentley* (1857) 3 K & J 271.

11 *Morris v Colman* (1812) 18 Ves 437. Authors and publishers who have sold the copyright in a work and covenanted not to publish a similar work may be restrained from publishing works in breach of the agreement: *Barfield v Nicholson* (1824) 2 Sim & St 1; *Ingram v Stiff* (1859) 5 Jur NS 947; *Ainsworth v Bentley* (1866) 14 WR 630; *Educational Co of Ireland Ltd v Fallon Bros and Getz* [1919] 1 IR 62. Cf *Macdonald (Erskine) Ltd v Eyles* [1921] 1 Ch 631, where an author who had granted to the plaintiff an option to publish her next three books was restrained from disposing of a novel written by her in breach of the agreement. See also CIVIL PROCEDURE vol 11 (2009) PARA 456.

12 As regards the invalidity of covenants that are in unreasonable restraint of trade see eg *Herbert Morris Ltd v Saxelby* [1916] 1 AC 688, HL.

13 The Society of Authors was founded in 1884 and is a non-profit-making organisation which advises members on all the business aspects of writing.

14 As to the Public Lending Right Scheme see the Public Lending Right Act 1979 s 3 (as amended); the Public Lending Right Scheme 1982 (Commencement) Order 1982, SI 1982/719 (as amended); and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 897.

15 In law 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. Accordingly, many modern statutes refer simply to 'the Secretary of State' without reference to a particular department or ministry. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

For the purposes of the Public Lending Right Act 1979, the functions previously exercised in practice by the Chancellor of the Duchy of Lancaster (see the Transfer of Functions (Arts and Libraries) Order 1979, SI

1979/907, art 2(1), Schedule Pt I) were then exercised by the Secretary of State (Transfer of Functions (Arts, Libraries and National Heritage) Order 1981, SI 1981/207, art 2(1), Schedule Pt I), and are now exercisable by the Secretary of State for Culture, Media and Sport (formerly known as the Secretary of State for National Heritage (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 498 et seq)) (see the Public Lending Right Act 1979 s 1(1) (amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I)). See also LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS vol 28 (Reissue) PARA 442; and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 897.

16 Subject to any provision made by the scheme, the duration of 'public lending right' in respect of a book is the time from the date of the book's first publication or, if later, the beginning of the year in which application is made for it to be registered, until 50 years have elapsed since the end of the year in which the author died: Public Lending Right Act 1979 s 1(6).

17 The Central Fund is constituted by the Secretary of State and managed by the Registrar of Public Lending Right: *ibid* s 2(1) (amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt I). Such sums are paid into it from time to time out of money provided by Parliament as the Secretary of State with Treasury approval determines: Public Lending Right Act 1979 s 2(2) (as so amended). As to the registrar see s 1(3), Schedule (as amended); and LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS vol 28 (Reissue) PARA 444.

18 'Local library authority' means a library authority under the Public Libraries and Museums Act 1964: Public Lending Right Act 1979 s 5(2).

19 *Ibid* s 1(1) (amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, Sch 1 Pt I).

As to the public lending right see further LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS vol 28 (Reissue) PARAS 442-464. The categories of books in respect of which there is a public lending right and the scales of payment are to be determined by or in accordance with the scheme, and in preparing the scheme the Secretary of State must consult representatives of authors, library authorities and others who appear likely to be affected by the scheme: Public Lending Right Act 1979 s 1(2) (as so amended).

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/402. Publication of editions.

#### **402. Publication of editions.**

A distinction must be made between traditional publications which are printed on paper and electronic publications. In the former, literary works are usually issued to the public in editions. Any fresh issue or publication of a work is an edition; it seems that it is unnecessary that the type be set up anew, or even that fresh copies be printed, the essential factor being that there is a determination to reissue the work to the public<sup>1</sup>.

The position in respect of electronic publications is different. While CD-ROMs<sup>2</sup> are issued to the public, and possibly in editions (when similar criteria will apply), an electronic on-line service is continually updated without any 'edition' being apparent<sup>3</sup>.

Where under an agreement between an author and his publisher<sup>4</sup> a licence is conferred on the publisher without limitation to any definite period, and where payment to the author is by royalties or by a share of the profits, the licence, although exclusive so long as it exists, is revocable; and the author can restrain the publication of any edition subsequent to the notice of revocation<sup>5</sup>.

1 *Reade v Bentley* (1858) 4 K & J 656.

2 As to CD-ROMs see PARA 401 note 2 ante.

3 As to publishing on the Internet see PARA 416 post.

4 As to the meaning of 'publisher' see PARA 401 note 1 ante.

5 *Reade v Bentley* (1858) 4 K & J 656, where an agreement to publish on profit-sharing terms was held to embody an implied licence revocable after the publication of each edition and before expense should be incurred in connection with the next edition. In *Warne v Routledge* (1874) LR 18 Eq 497 it was held that an author might determine a licence to publish, and publish a second edition himself, even before the first edition was sold out. See also COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 177.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/403. Contract designating particular publication.

### **403. Contract designating particular publication.**

A contract to accept an article to appear in a particular magazine is not fulfilled by publication in another magazine or separately in book form, so that the discontinuance of the magazine contracted for is a breach of contract, and the author is not obliged to complete the work, but may sue for damages at once<sup>1</sup>.

Moreover, in the absence of express stipulation, if an article is to be published in such a way that persons reading it will be informed of the identity of the author, no material alterations may be made which would misrepresent the views or style of the author or bring discredit upon his reputation<sup>2</sup>.

1 *Planche v Colburn* (1831) 5 C & P 58. See also CONTRACT vol 9(1) (Reissue) PARA 1004 et seq.

2 See *Joseph v National Magazine Co Ltd* [1959] Ch 14, [1958] 3 All ER 52; and PARA 409 post. As to moral rights of the author see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 455-484.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/404. Assignment.

### **404. Assignment.**

The contract between an author and a publisher<sup>1</sup> has long been held to be personal<sup>2</sup>, and not assignable by the publisher without the author's consent<sup>3</sup>, whether or not the publisher is a limited company<sup>4</sup>.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante.

2 See PARA 406 post; and CONTRACT vol 9(1) (Reissue) PARA 926; COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 178.

3 *Stevens v Benning* (1854) 1 K & J 168 (affd (1855) 6 De GM & G 223); *Hole v Bradbury* (1879) 12 ChD 886. It is submitted that consent may in certain cases be deemed from the conduct of the author. The authority for the non-assignability of such contracts is derived from old case law, and since the publishing process has undergone change in the interim, it is now thought that there must at least be some doubt whether these cases would necessarily still be upheld.

<sup>4</sup> *Griffith v Tower Publishing Co Ltd and Moncrieff* [1897] 1 Ch 21. As to the assignment of copyright see PARA 407 post; and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 160 et seq.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/405. The author's duties.

#### **405. The author's duties.**

Where an author contracts to write a specified work, failure to supply the manuscript gives rise to a cause of action, the measure of damages being the estimated profit<sup>1</sup>. The court will not grant an order of specific performance<sup>2</sup> to compel the author to write the work because the court will not order specific performance of a contract for personal services or one which involves personal skill<sup>3</sup>. However, it seems that where the agreement between the publisher<sup>4</sup> and the author gives the publisher an interest in the copyright or an option to become entitled to such an interest, the publisher may obtain an injunction<sup>5</sup> to restrain the author from disposing of his work in breach of the agreement and to restrain another publisher who has knowledge of the agreement from publishing the work<sup>6</sup>. Moreover, where the publisher has an option to purchase the author's future works, offering the publisher the author's earlier works will not fulfil his obligation to the publisher<sup>7</sup>.

<sup>1</sup> *Gale v Leckie* (1817) 2 Stark 107.

<sup>2</sup> As to specific performance see generally SPECIFIC PERFORMANCE.

<sup>3</sup> *Clarke v Price* (1819) 2 Wils Ch 157. See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 162; SPECIFIC PERFORMANCE.

<sup>4</sup> As to the meaning of 'publisher' see PARA 401 note 1 ante.

<sup>5</sup> As to injunctions see generally CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

<sup>6</sup> See *Macdonald (Erskine) Ltd v Eyles* [1921] 1 Ch 631, where Peterson J held that the contract between the author and the publisher was in the circumstances not a contract for personal services but a contract by the author to hand over to the publishers for a consideration the product of her labour.

<sup>7</sup> *Macdonald (Erskine) Ltd v Eyles* [1921] 1 Ch 631 at 637.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/406. The publisher's duties.

#### **406. The publisher's duties.**

An assignment of the copyright<sup>1</sup> in a work does not by itself impose any obligation to publish the work even if the only consideration for the assignment is payment by royalty or a share of the profits<sup>2</sup>. However, the contract between the author and the publisher<sup>3</sup> will usually impose an express obligation on the publisher to publish, and if he fails to carry out this obligation he will be liable in damages<sup>4</sup>, and in certain circumstances the author may be able to obtain an order for specific performance of the contract<sup>5</sup>. A publisher who has agreed to publish an author's book on terms providing for the payment of a royalty to the author is entitled to publish a competing book, and an agreement not to do anything to injure the author's rights to royalties will not be implied<sup>6</sup>. A publisher who, during a telephone conversation, gave a firm commitment

to publish and spoke of 'a fair royalty' was found to have entered into a legally enforceable contract<sup>7</sup>.

A publisher will be liable for any libel<sup>8</sup> or infringement of copyright<sup>9</sup> contained in any work published by him, although in an action against him for damages for libel he may be able to obtain an indemnity or contribution from the author either under an express indemnity<sup>10</sup> or by statute<sup>11</sup>.

1 As to the assignment of copyright see PARA 407 post.

2 *Hole v Bradbury* (1879) 12 ChD 886 at 895; cf *Gollancz v Dent* (1903) 88 LT 358.

3 As to the meaning of 'publisher' see PARA 401 note 1 ante.

4 If no number of copies is specified in the contract the damages will be assessed on the basis that the publisher was bound to publish a reasonable number: *Abrahams v Herbert Reisch Ltd* [1922] 1 KB 477, CA. If no time for publication is agreed the publisher must publish within a reasonable time: *Crane v C Arthur Pearson Ltd* (1937) MacG Cop Cas (1936-45) 125.

5 *Barrow v Chappell & Co Ltd* [1976] RPC 355. However, it is unlikely that specific performance will be granted in these circumstances, and it will never be granted if the contract relates to a work not yet written of which the text had not been agreed. Cf *Joseph v National Magazine Co Ltd* [1959] Ch 14, [1958] 3 All ER 52. As to specific performance see generally SPECIFIC PERFORMANCE.

6 *Cescinsky v George Routledge & Sons Ltd* [1916] 2 KB 325 at 329.

7 See *Malcolm v Chancellor, Masters and Scholars of the University of Oxford* [1994] EMLR 17, CA.

8 This may be along with the author, printer, vendor and Internet access provider, where there is one: see PARA 411 post; and LIBEL AND SLANDER vol 28 (Reissue) PARAS 60-81. As to joint and several liability see LIBEL AND SLANDER vol 28 (Reissue) PARA 38. It would appear that an Internet access provider is liable for publication, although if he has no effective control over the maker of the statement he will have a statutory defence. As to the statutory defence available see the Defamation Act 1996 s 1(3)(e); and LIBEL AND SLANDER vol 28 (Reissue) PARA 158. See also *Godfrey v Demon Internet Ltd* [1999] NL JR 609; and PARA 416 post. As to the statutory defence for printers, distributors and other secondary publishers see LIBEL AND SLANDER vol 28 (Reissue) PARAS 157-159. As to publishers liability for libel see LIBEL AND SLANDER vol 28 (Reissue) PARA 67. As to criminal liability for defamatory, seditious, blasphemous or obscene matter see PARA 419 post. As to civil liability for publication of libel see PARA 420 post.

9 See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 40, 47, 66-67, 75-79. However, a publisher of a trade directory does not infringe someone's trade mark by inaccurately ascribing it to another: *M Ravok (Weatherwear) Ltd v National Trade Press Ltd* [1955] 1 QB 554, [1955] 1 All ER 621.

10 See LIBEL AND SLANDER vol 28 (Reissue) PARAS 9, 38.

11 See the Civil Liability (Contribution) Act 1978 s 1; and TORT.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/407. Assignment of copyright.

#### **407. Assignment of copyright.**

A legal assignment of copyright<sup>1</sup> or any part of it vests the right assigned in the assignee so that he becomes the owner of the right and may take proceedings against persons who infringe it<sup>2</sup>.

An assignment of copyright imposes no obligation on the part of the assignee to publish, unless it is a term of the agreement that the work is to be published by him<sup>3</sup>.

In the absence of special agreement to the contrary the assignor of copyright is entitled, after the assignment, to continue to sell any copies in his possession which were printed by him before the assignment<sup>4</sup>. There is an implied term that an assignor must not do anything that will render what he has assigned valueless; for example he must not publish a similar work<sup>5</sup>. If an author has assigned a work consisting of selections made by him from an original work of his own, the assignee may prevent the assignor from using that part of the original work which is reproduced in the work which has been assigned<sup>6</sup>.

1 For the meaning of 'copyright' see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 3.

2 See further COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 166.

3 See eg *Hole v Bradbury* (1879) 12 ChD 886 at 895.

4 *Taylor v Pillow* (1869) LR 7 Eq 418 but see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 167.

5 *Educational Company of Ireland Ltd v Fallon Bros Ltd and Getz* [1919] 1 IR 62.

6 *Metzler & Co (1920) Ltd v J Curwen & Sons Ltd* (1930) MacG Cop Cas (1928-35) 127.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/408. Custody of a manuscript or other work.

#### **408. Custody of a manuscript or other work.**

If an author submits a manuscript to an editor or publisher<sup>1</sup> without any request or invitation to do so<sup>2</sup>, in the absence of circumstances showing an acceptance of the manuscript for publication, the editor or publisher is not responsible for its safe custody, and if the manuscript is lost the author cannot recover its value<sup>3</sup>. However, the editor or publisher is liable should he withhold it from the author after demand has been made for its return, and he is also liable for improper use of the manuscript for his own purposes<sup>4</sup>.

Where a manuscript is submitted to an editor or publisher in response to an express or implied invitation, or articles are ordered to be written and sent to him for approval, the standard of care required of the editor or publisher is that which a prudent man would take of similar property of his own<sup>5</sup>, and, if he proves that such care has been taken, the burden of proof is discharged and he is not bound to account for the cause of the loss.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante.

2 It would seem that most editors and publishers hold themselves out as being ready and willing to receive and read authors' manuscripts of a suitable character and that a request or invitation to submit manuscripts could be implied. It is therefore likely that cases of involuntary bailments are rare in practice. As to involuntary bailments see BAILMENT vol 3(1) (2005 Reissue) PARAS 9-10.

3 See *Reeve v Palmer* (1858) 5 CBNS 84 (affd (1858) 5 CBNS 84 at 91, Ex Ch); *Goodman v Boycott* (1862) 2 B & S 1; *Howard v Harris* (1884) Cab & El 253. See also BAILMENT vol 3(1) (2005 Reissue) PARA 10.

In an age of photocopiers, it is thought that there is little excuse for an author not to have taken a copy of his work, and in an age of computers no excuse where delivery is by electronic means. It may be noted that in 1999 the format for delivery by authors of many works is by electronic means.

4 See BAILMENT vol 3(1) (2005 Reissue) PARA 10. See also the Torts (Interference with Goods) Act 1977 s 12, Sch 1; and BAILMENT vol 3(1) (2005 Reissue) PARA 80.

5 *Bullen v Swan Electric Engraving Co* (1906) 22 TLR 275; affd (1907) 23 TLR 258, CA. In that case, on appeal at 259, Farwell LJ stated that, if correctly reported *Powell v Graves & Co* (1886) 2 TLR 663 (a case of a lost picture) could hardly be supported in view of the absence of any plea or proof that reasonable care had been taken. See further BAILMENT vol 3(1) (2005 Reissue) PARA 15 et seq.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/409. Rights with regard to manuscript or other work.

#### **409. Rights with regard to manuscript or other work.**

The manner in which an editor or publisher<sup>1</sup> is entitled to deal with a text supplied by an author for the purpose of reproduction in pursuance of a contract depends on the terms of the contract. In the absence of express stipulation, no material alterations may be made to the text which would misrepresent the views or style of the author<sup>2</sup> or infringe his right of integrity<sup>3</sup>.

However, if there is no grant of copyright, but merely a licence to use written material for agreed purposes, the licensee may make alterations, even substantial ones, in the copyright work, unless either the terms of the licence expressly or impliedly forbid the making of alterations<sup>4</sup> or the alterations amount to an infringement of the author's right of integrity<sup>5</sup>.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante.

2 See *Joseph v National Magazine Co Ltd* [1959] Ch 14, [1958] 3 All ER 52.

3 See PARA 403 ante. As to moral rights see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 455-484.

4 *Frisby v British Broadcasting Corp'n* [1967] Ch 932, [1967] 2 All ER 106. The court will readily imply a term limiting the right to make alterations.

5 See *Clark v Associated Newspapers Ltd* [1998] 1 All ER 959, [1998] 1 WLR 1558.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(i) Publishers and Authors/410. Abolition of the Net Book Agreement.

#### **410. Abolition of the Net Book Agreement.**

The Net Book Agreement of 1957<sup>1</sup> bound all members of the Publishers Association, set out standard conditions of sale for all books published as 'net books'<sup>2</sup>, and in particular provided that net books must not be sold or offered for sale to the public at less than the net published price<sup>3</sup>. The Net Book Agreement of 1957 was abolished<sup>4</sup>.

1 See *Re Net Book Agreement 1957* [1962] 3 All ER 751 at 765, [1962] 1 WLR 1347 at 1364 per Buckley J. The restrictions imposed by the agreement were referred to the court by the Registrar of Restrictive Trading Agreements as contrary to the public interest under the Restrictive Trade Practices Act 1956 s 20(1), (2)(a) (repealed).

2 'Net book' means a book, pamphlet, map or other similar printed matter, published at a net price (Net Book Agreement of 1957 cl vi (now abolished: see note 4 infra); and 'net price' and 'net published price' mean the price fixed from time to time by the publisher below which the net book must not be sold to the public (Net Book Agreement of 1957 cl vi (now abolished: see note 4 infra)). As to the meaning of 'publisher' see PARA 401 note 1 ante.



3 The Net Book Agreement of 1957 was held by the court not to be contrary to the public interest, principally because the consequence of the removal of the restriction as to sale at less than the net published price would be that there would be fewer and less well-equipped stockholding bookshops, that books would be more expensive and fewer books would be published: *Re Net Book Agreement 1957* [1962] 3 All ER 751 at 754, [1962] 1 WLR 1347 at 1349 per Buckley J.

4 As to the abolition of the Net Book Agreement of 1957 see *Re Net Book Agreement 1957 (No 3)* [1998] ICR 741; and *Re Net Book Agreement 1957 (No 4)* [1998] ICR 753.

The Net Book Agreement of 1957 collapsed in September 1995: see *Re Net Book Agreement 1957 (No 4)* [1998] ICR 753 at 763 per Ferris J. The Director General of Fair Trading applied under the Restrictive Trade Practices Act 1976 s 4 (as originally enacted) and the Resale Prices Act 1976 s 17 (as originally enacted) to discharge orders made in the 1960s to the effect that the Net Book Agreement of 1957, which restricted the resale prices of net books, was not contrary to the public interest: see *Re Net Book Agreement 1957 (M and N)* (1997) Times, 20 March, RPC. The earlier orders were discharged and a declaration was made that the Net Book Agreement had become contrary to the public interest.

## UPDATE

### 410 Abolition of the Net Book Agreement

NOTE 4--Restrictive Trade Practices Act 1976 and Resale Prices Act 1976 replaced: see now the Competition Act 1998 Pt I Ch I (ss 1-60); and COMPETITION vol 18 (2009) PARA 115 et seq.

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## (ii) Printers

### 411. Printers and publishers.

Where the publisher<sup>1</sup> and the printer of a work are different persons<sup>2</sup> their relationship is governed by the contract between them<sup>3</sup>. A contract to print an immoral book is illegal and void, and the printer cannot recover from the publisher his charges for printing it<sup>4</sup>. A printer may be liable for the publication of a libel<sup>5</sup>. A contract to print a libel is illegal and void, but a printer is entitled to payment for work done before he discovers that the matter is libellous<sup>6</sup>. A printer may be liable for infringement of copyright<sup>7</sup>.

A printer has a particular lien for work done upon copies of books not delivered<sup>8</sup>, and a lien on engravings printed, but not on the plates from which the engravings were printed<sup>9</sup>.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante.

2 The business of printing books is usually quite separate from that of publishing as is the business of replicating works provided on CD-ROMs, DVD-ROMs or other physical media. As to publishing on the Internet see PARA 416 post. As to CD-ROMs and DVD-ROMs see PARA 401 note 2 ante.

As to the exclusive right of the Crown to print the Authorised Version of the Bible and the Book of Common Prayer, and all ordinances of the state (eg proclamations, Acts of Parliament, Orders in Council) see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 5. As to the exclusive right of universities and colleges to print all books bequeathed or given to them, or in trust for them (provided the gifts had effect before 1 July 1912) see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 6.

3 A contract to print a work may be indivisible. As to the distinction between entire and divisible contracts see CONTRACT vol 9(1) (Reissue) PARA 627. In *Adlard v Booth* (1835) 7 C & P 108, a printer who had delivered a

certain number of copies, and who was prevented from completing the contract by the destruction of his premises by fire, was held not entitled to recover anything: see CONTRACT vol 9(1) (Reissue) PARA 922. There is a usage that printers are paid on completion of the work: see *Gillett v Mawman* (1808) 1 Taunt 137; and CUSTOM AND USAGE vol 12(1) (Reissue) PARA 688.

4 *Poplett v Stockdale* (1825) 2 C & P 198. As to illegality see CONTRACT vol 9(1) (Reissue) PARA 869 et seq.

5 As to the liability of printers for publishing a libel see LIBEL AND SLANDER vol 28 (Reissue) PARA 70. In many cases the printer will be able to obtain a contribution order against other persons liable: see LIBEL AND SLANDER vol 28 (Reissue) PARA 38. As to contribution between tortfeasors generally see TORT. As to publishers' liability for libel see PARA 406 text and note 8 ante.

In addition, an agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter is not unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it: Defamation Act 1952 s 11. See also FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1270; LIBEL AND SLANDER vol 28 (Reissue) PARA 9. As to criminal proceedings in respect of libel see PARA 419 post; and LIBEL AND SLANDER vol 28 (Reissue) PARA 288 et seq. As to civil liability for publication of libel see PARA 420 post.

6 *Clay v Yates* (1856) 1 H & N 73; and *Apthorp v Neville & Co* (1907) 23 TLR 575. See also CONTRACT vol 9(1) (Reissue) PARA 874; and RESTITUTION vol 40(1) (2007 Reissue) PARA 176.

7 See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 314 et seq. As to contribution between joint tortfeasors see the Civil Liability (Contribution) Act 1978; and TORT.

8 *Blake v Nicholson* (1814) 3 M & S 167; and see LIEN vol 68 (2008) PARAS 841-845.

9 *Bleaden v Hancock* (1829) 4 C & P 152; and see LIEN vol 68 (2008) PARA 841.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(ii) Printers/412. Printer's name to appear.

#### **412. Printer's name to appear.**

Every printed paper or book<sup>1</sup> which at the time when it is printed is meant to be published or dispersed must have upon the front of the paper, if printed upon one side only, or upon the first or last leaf of every paper or book consisting of more than one leaf, the name and address of the printer<sup>2</sup>, but books or papers printed at the University Press of Oxford, or the Pitt Press of Cambridge, must bear, instead of the name of the printer, the words 'Printed at the University Press, Oxford', or 'The Pitt Press, Cambridge', as the case may be<sup>3</sup>.

However, a printer is not required to print a statement of his name and usual place of abode or business, referred to as the 'printer's imprint', on any paper or book unless the matter printed by him comprises either<sup>4</sup>: (1) words grouped together in a manner to convey a message, other than words calculated to convey only a greeting, invitation or other message in a conventional form<sup>5</sup>; or (2) a drawing, illustration or other picture, other than a picture representing only a geometrical, floral or other design or a registered trade mark or any combination of these<sup>6</sup>.

Every person who prints any paper or book which does not comply with the requirement for the printer's name to appear is liable to a sum not exceeding level 1 on the standard scale for every copy so printed<sup>7</sup>. Every person who publishes or disperses, or assists in publishing or dispersing, any printed paper or book which does not comply with these requirements is liable to a sum not exceeding level 1 on the standard scale for every copy so published or dispersed<sup>8</sup>.

Proceedings for the recovery of penalties must be commenced in the name of Her Majesty's Attorney General<sup>9</sup>. If they are not so commenced the proceedings are null and void, and the court has no jurisdiction to amend the defect<sup>10</sup>.

1 A person must not: (1) print or publish, or cause to be printed or published, any bill, placard or poster having reference to an election or any printed document distributed for the purpose of promoting or procuring the election of a candidate; (2) post or cause to be posted any such bill, placard or poster as mentioned in head (1) supra; or (3) distribute or cause to be distributed any printed document for that purpose, unless the bill, placard, poster or document bears upon its face the name and address of the printer and publisher: Representation of the People Act 1983 s 110(1). A candidate or election agent acting in contravention of this provision is guilty of an illegal practice, and any other person so acting is on summary conviction liable to a fine not exceeding level 5 on the standard scale: s 110(3) (amended by the Representation of the People Act 1985 s 23, Sch 3 para 6); and see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 751. For the meaning of 'election' see ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 3. For the meaning of 'candidate' see ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 237. See further ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 751.

The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

2 Newspapers, Printers, and Reading Rooms Repeal Act 1869 s 1, Sch 2 (re-enacting the Printers and Publishers Act 1839 (2 & 3 Vict c 12) s 2). The aim of this provision was to avoid anonymous libellous pamphlets being circulated: *R v Leadenhall Press Ltd* (1913) 48 L Jo 41n. If a printer fails to comply with this requirement he may not sue for the price of the materials and the labour expended: *Bensley v Bignold* (1822) 5 B & Ald 335.

3 Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (re-enacting the Printers and Publishers Act 1839 s 3).

4 Printer's Imprint Act 1961 s 1(1).

5 Ibid s 1(1)(a).

6 Ibid s 1(1)(b). As to the exemptions to the printer's imprint requirement see PARA 414 post. As to registered trade marks generally see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 2 et seq.

7 Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (amended by virtue of the Criminal Justice Act 1982 s 46). The Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended) re-enacts the Printers and Publishers Act 1839 s 2. See note 1 supra. See also PARA 413 note 2 post.

8 Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended: see note 7 supra) (re-enacting the Printers and Publishers Act 1839 s 2) (as construed in *A-G v Beauchamp* [1920] 1 KB 650).

9 See the Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (amended by the Law Officers Act 1997 s 3(2)). The Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended) re-enacts the Printers and Publishers Act 1839 s 4 (repealed). For an example of the refusal of the Attorney General to sanction a prosecution in respect of a publication without the name and address of the printer see 609 HC Official Report (5th series), 23 July 1959, written answers col 167. As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq.

10 *Key v Bastin* [1925] 1 KB 650.

## UPDATE

### 412 Printer's name to appear

NOTE 1--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

NOTE 7--1869 Act Sch 2 amended: Courts Act 2003 Sch 8 para 50, Sch 10.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(ii) Printers/413. Preservation of copies.

### **413. Preservation of copies.**

Every person who prints any paper<sup>1</sup> for hire, reward, gain or profit must preserve at least one copy for a period of six months, and on it he must write, or have written or printed, in legible characters, the name and address of the person who employed him to do the work<sup>2</sup>. However, a printer is not required to preserve or keep a copy of any paper or book which is not required<sup>3</sup> to bear the printer's imprint<sup>4</sup>, but within a period of six months the printer must produce a copy of such a paper or book to any justice of the peace<sup>5</sup> who requires to see it<sup>6</sup>.

The penalty for failing to preserve a copy, to write the required particulars upon it, or to produce it when required to do so, is for every such omission, neglect, or refusal, a sum equivalent to level 2 on the standard scale<sup>7</sup>. No proceedings may be taken to recover these penalties except in the name of Her Majesty's Attorney General<sup>8</sup>.

These provisions apply to printed material only, not to electronic works.

1 As to the papers which do not need to be preserved see PARA 414 post.

2 See the Newspapers, Printers, and Reading Rooms Repeal Act 1869 s 1, Sch 2 (re-enacting the Unlawful Societies Act 1799 s 29 (repealed)). Unless this requirement is complied with, a printer may not recover the cost of the printing: *Bensley v Bignold* (1822) 5 B & Ald 335.

3 Is not required by either the Newspapers, Printers, and Reading Rooms Repeal Act 1869 or the Printer's Imprint Act 1961: see s 1(2). As to the printer's imprint, and when it is required see PARA 412 ante; and as to the papers exempted from that requirement see PARA 414 post.

4 Ibid s 1(2). Nothing in the Newspapers, Printers, and Reading Rooms Repeal Act 1869 prohibits any person from publishing or dispersing or assisting in publishing or dispersing a copy of any paper or book which is not required to bear the printer's imprint: Printer's Imprint Act 1961 s 1(2).

5 A justice of the peace may be either a lay justice or a stipendiary magistrate: see MAGISTRATES.

6 See the Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2; and note 2 supra.

7 See ibid Sch 2 (amended by virtue of the Criminal Justice Act 1982 s 46); and note 2 supra. As to the standard scale see PARA 412 note 1 ante. Any penalty so imposed must and may be recovered before any justice of the peace of the area in which the penalty is incurred or where the person who incurred it is to be found: see the Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (amended by the Statute Law Revision Act 1948). The Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended) re-enacts the Unlawful Societies Act 1799 s 35 (repealed). Proceedings must be commenced within three months after the breach of the requirement: see the Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (re-enacting the Unlawful Societies Act 1799 s 34). As to the application of fines see the Justices of the Peace Act 1997 s 60; and MAGISTRATES.

8 See the Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (amended by the Law Officers Act 1997 s 3(2)). The Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended) re-enacts the Seditious Meeting Act 1846 s 1 (repealed). As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq. See also PARA 412 ante.

## **UPDATE**

### **413 Preservation of copies**

NOTE 7--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(ii) Printers/414. Exemptions to requirements.

#### **414. Exemptions to requirements.**

The requirement that the printer's imprint should appear on every printed paper for publication<sup>1</sup>, and the obligation to preserve copies<sup>2</sup>, do not apply: (1) to any papers printed under the authority and for the use of either House of Parliament<sup>3</sup>; or (2) to the printing of the name or the name and address or business or profession of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise<sup>4</sup>.

The printer's imprint need not appear on a banknote of the Bank of England, a bill of exchange or promissory note, any bond or other security for payment of money, any bill of lading, policy of insurance, letter of attorney, deed, agreement, any transfer or assignment of any public stocks, funds or other securities, any transfer or assignment of the stocks of any public corporation or company, authorised or sanctioned by Act of Parliament, any dividend warrant of or for such public or other stocks, funds or securities, any receipt for money or goods, any proceeding in any court of law, or any warrant, order or other papers printed by the authority of any public board or officer in the execution of the duties of their offices<sup>5</sup>.

This requirement does not apply to material in electronic form.

1 As to this requirement see PARA 412 ante.

2 As to this obligation see PARA 413 ante.

3 See the Newspapers, Printers, and Reading Rooms Repeal Act 1869 s 1, Sch 2 (re-enacting the Unlawful Societies Act 1799 s 28).

4 Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (amended by the Printer's Imprint Act 1961 s 1(3)). The Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended) re-enacts the Unlawful Societies Act 1799 s 31.

5 See the Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (amended by the Statute Law Revision (No 2) Act 1893; and the Statute Law (Repeals) Act 1973). The Newspapers, Printers, and Reading Rooms Repeal Act 1869 Sch 2 (as amended) re-enacts the Printers and Publishers Act 1811 (51 Geo 3 c 65) s 3.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(ii) Printers/415. Delivery of copies to the British Library and other libraries.

#### **415. Delivery of copies to the British Library and other libraries.**

The publisher<sup>1</sup> of every book<sup>2</sup> published in the United Kingdom<sup>3</sup> must, within one month after the publication, deliver at his own expense, a copy of the book to the British Library Board<sup>4</sup>, which must give a written receipt for it<sup>5</sup>.

If written demand is made within 12 months of publication, the publisher is required to deliver a copy to, or to some named depot in London on behalf of, the Bodleian Library, Oxford, the University Library, Cambridge, the National Library of Scotland, the Library of Trinity College, Dublin, and, subject to limitations made by regulations, the National Library of Wales<sup>6</sup>.

While the above does not currently apply to works in electronic form, proposals have been tabled under which particular types of electronic works may need to be 'deposited'. In the

interim and pending legislation, voluntary arrangements are under discussion. Unlike the deposit of physical objects, 'deposit', storage and access to material in electronic form gives rise to copyright issues<sup>7</sup>.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante.

2 'Book' includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but does not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints or other engravings belonging to it: Copyright Act 1911 s 15(7).

3 This means Great Britain and Northern Ireland as the Republic of Ireland is excluded: see the Eire (Confirmation of Agreements) Act 1938 s 1 (repealed); the Ireland Act 1949 s 1(1), (3); and the Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, art 2 (made under the Irish Free State (Consequential Provisions) Act 1922 (Session 2) s 6 (as amended)). Cf also para 401 note 19 post.

4 As to the British Library Board see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 908 et seq.

5 Copyright Act 1911 s 15(1) (amended by the Copyright (British Museum) Act 1915 (repealed); the British Museum Act 1932 s 2(2) (repealed); and the British Library Act 1972 s 4(1)). As to this obligation see also COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 15. Certain classes of publication are not required to be delivered unless a written demand for their delivery is made by the British Library Board: see the British Museum Act 1932 s 1(1) (amended by the British Library Act 1972 s 4(1)(a)). These classes are: (1) trade advertisements; (2) registers of voters; (3) patent specifications; (4) passenger time-tables; (5) calendars; (6) blank forms of accounts, receipts etc; and (7) wall sheets used for educational purposes: see the British Museum Act 1932 s 1 (as so amended), Schedule.

6 See the Copyright Act 1911 s 15(2) (amended by the National Library of Scotland Act 1925 s 5(1)). The books of which copies are to be delivered to the National Library of Wales do not include books of such classes as may be specified in regulations to be made by the Secretary of State: Copyright Act 1911 s 15(5) (amended by the Transfer of Functions (Arts, Libraries and National Heritage) Order 1986, SI 1986/600, arts 2(4), 6(1), Sch 2 para 1; and the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 3(1), Sch 1 Pt 1). The regulations previously made under the Copyright Act 1911 s 15(2) (as amended) were revoked: see the National Library of Wales (Delivery of Books) (Amendment) Order 1987, SI 1987/698. In the case of an encyclopaedia, newspaper, review, magazine or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published: Copyright Act 1911 s 15(2). See also NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 898-902. As to the Secretary of State see PARA 401 note 15 ante.

7 See generally COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS.

## UPDATE

### 415 Delivery of copies to the British Library and other libraries

TEXT AND NOTES--Replaced. Copyright Act 1911 s 15 repealed by the Legal Deposit Libraries Act 2003 which imposes new requirements in relation to the deposit of printed and similar publications, including on and off line publications.

#### 1. Deposit of publications

A person who publishes in the United Kingdom a work<sup>1</sup> to which these provisions apply must at his own expense deliver a copy of it to an address<sup>2</sup> specified, generally or in a particular case, by any deposit library<sup>3</sup> entitled to delivery<sup>4</sup>. If a deposit library other than the authority controlling the Library of Trinity College, Dublin has not specified an address, the copy is to be delivered to the library<sup>5</sup>.

In the case of a work published in print, these provisions apply to (1) a book, including a pamphlet, magazine or newspaper; (2) a sheet of letterpress or music; (3) a map, plan, chart or table; and (4) a part of any such work; but that is subject to any prescribed<sup>6</sup> exception<sup>7</sup>. In the case of a work published in a medium<sup>8</sup> other than print,

these provisions apply to a work of a prescribed description<sup>9</sup>. These provisions do not apply to a work which is substantially the same as one already published in the same medium in the United Kingdom<sup>10</sup>. Where substantially the same work is published in the United Kingdom in more than one medium the duty to deposit applies only in relation to its publication<sup>11</sup> in one of those media, and that medium is to be determined in accordance with regulations made by the Secretary of State<sup>12</sup>. The Secretary of State may by regulations make provision as to circumstances in which works are or are not to be regarded for the purposes of this section as substantially the same<sup>13</sup>.

Where a publisher who is required to deliver anything to an address specified by a deposit library, or to a deposit library, has failed to comply with that obligation, the library may, in accordance with rules of court, apply to the county court for an order requiring the publisher to comply with the obligation<sup>14</sup>. If on such an application it appears that the publisher is unable to comply with the obligation, or for any other reason, it is not appropriate to make an order, the court may instead make an order requiring the publisher to pay to the library an amount which is not more than the cost of making good the failure to comply<sup>15</sup>.

The British Library Board is entitled to delivery of a copy of every work published in print<sup>16</sup>. The copy must be delivered within one month beginning with the day of publication<sup>17</sup>. The copy is to be of the same quality as the best copies which, at the time of delivery, have been produced for publication in the United Kingdom<sup>18</sup>. The Board must give a receipt in writing, whether sent by electronic or other means<sup>19</sup>. Each deposit library other than the British Library Board is entitled to delivery of a copy of any work published in print which it requests<sup>20</sup>. A request must be in writing, whether sent by electronic or other means<sup>21</sup>. A request may be made before publication, and in particular, may relate to all future numbers or parts of an encyclopaedia, newspaper, magazine or other work<sup>22</sup>. No request may be made after the end of 12 months beginning with the day of publication<sup>23</sup>. The copy must be delivered within one month beginning with the day of publication, or if later, the day on which the request is received<sup>24</sup>. The copy is to be of the same quality as the largest number of copies which, at the time of delivery, have been produced for publication in the United Kingdom<sup>25</sup>.

The Secretary of State may make supplementary regulations regarding the duty to deposit works published in media other than print<sup>26</sup>. A relevant person<sup>27</sup> may not do any of the activities listed below in relation to relevant material<sup>28</sup>. The activities are (a) using the material, whether or not such use necessarily involves the making of a temporary copy of it; (b) copying the material, other than by making a temporary copy where this is necessary for the purpose of using the material; (c) in the case of relevant material comprising or containing a computer program or database, adapting it; (d) lending the material to a third party, other than lending by a deposit library to a reader<sup>29</sup> for use by the reader on library premises controlled by the library; (e) transferring the material to a third party; and (f) disposing of the material<sup>30</sup>. A contravention of this provision is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty<sup>31</sup>. The Secretary of State may by regulations make provision permitting relevant persons to do any of the activities listed above in relation to relevant material, subject to such conditions as may be prescribed<sup>32</sup>.

1 See text to NOTES 6-13.

2 'Address' means an address in the United Kingdom or an electronic address: Legal Deposit Libraries Act 2003 s 1(7).

3 'Deposit library' means any of the British Library Board and the authorities controlling (1) the National Library of Scotland; (2) the National Library of Wales; (3) the Bodleian Library, Oxford; (4) the University Library, Cambridge; and (5) the Library of Trinity College, Dublin: *ibid* s 14.

4 Ibid s 1(1). Subject to s 6(2)(h), the obligation under s 1(1) is to deliver a copy of the work in the medium in which it is published: s 1(6).

5 Ibid s 1(2).

6 'Prescribed' means prescribed by regulations made by the Secretary of State: ibid s 14.

7 Ibid s 1(3).

8 'Medium' means any medium of publication, including in particular any form of on line or off line publication: ibid s 14.

9 Ibid s 1(4). A prescribed description may not include works consisting only of a sound recording or film or both, or such material and other material which is merely incidental to it: s 1(5). For the meaning of 'sound recording' see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 84. For the meaning of 'film' see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 86.

10 Ibid s 2(1).

11 'Publication', in relation to a work, means the issue of copies of the work to the public, and includes making the work available to the public by means of an electronic retrieval system: ibid s 14.

12 Ibid s 2(2).

13 Ibid s 2(3).

14 Ibid s 3(1), (2).

15 Ibid s 3(3).

16 Ibid s 4(1).

17 Ibid s 4(2).

18 Ibid s 4(3).

19 Ibid s 4(4).

20 Ibid s 5(1).

21 Ibid s 5(2).

22 Ibid s 5(3).

23 Ibid s 5(4).

24 Ibid s 5(5).

25 Ibid s 5(6).

26 Ibid s 6(1). As to particular provision that may be made in relation to the duty to deposit works published in media other than print see s 6(2).

27 'Relevant person' means (1) a deposit library or person acting on its behalf; (2) a reader: ibid s 7(5)(a).

28 Ibid s 7(1). 'Relevant material' means (1) a copy delivered under s 1 of a work published in a medium other than print; (2) a copy delivered pursuant to regulations under s 6 of a computer program or material within s 6(2)(b); (3) a copy of a work to which s 10(6) applies; (4) a copy, at any remove, of anything within any of heads (1)-(3) above: s 7(5)(b).

29 'Reader' means a person who, for the purposes of research or study and with the permission of a deposit library, is on library premises controlled by it: ibid s 7(5)(a).

30 Ibid s 7(2).



31 Ibid s 7(6).

32 Ibid s 7(3). As to particular provision that may be made by regulations under s 7 see s 7(4).

## 2. Exemption from liability

The delivery by a person of a copy of a work is to be taken not to breach any contract relating to any part of the work to which that person is a party, and not to infringe copyright, publication right<sup>1</sup> or database right<sup>2</sup> in relation to any part of the work or any patent<sup>3</sup>.

A deposit library<sup>4</sup>, or a person acting on its behalf, is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person<sup>5</sup> of specified activities<sup>6</sup> in relation to a copy of a work delivered<sup>7</sup>. This does not apply to the liability of a deposit library where it knows, or in the case of liability in damages it knows of facts or circumstances from which it ought to know, that the copy contains a defamatory statement, and it has had a reasonable opportunity since obtaining that knowledge to prevent the doing of the activity in relation to the copy<sup>8</sup>. Where a publisher has delivered a copy of a work to an address specified by a deposit library, the publisher is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of specified activities<sup>9</sup> in relation to the copy<sup>10</sup>. This does not apply where the publisher knows, or in the case of liability in damages the publisher knows of facts or circumstances from which it ought to know, that the copy contains a defamatory statement, and it has had a reasonable opportunity since obtaining that knowledge to inform the library of the matter, facts or circumstances known to it and has not done so<sup>11</sup>. Where a work is published on the internet, no person other than the library is liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of specified activities<sup>12</sup> in relation to a copy of the work, and specified statutory provisions<sup>13</sup> apply in relation to the doing of an activity in relation to the copy as they apply in relation to the doing of the activity in relation to a copy of a work delivered if (1) the work is of a description prescribed<sup>14</sup> by regulations; (2) the publication<sup>15</sup> of the work on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed; and (3) the copy was made by a deposit library or person acting on its behalf copying the work from the internet in accordance with any conditions so prescribed<sup>16</sup>.

1 For the meaning of 'publication right' see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 497.

2 For the meaning of 'database right' see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 736.

3 Legal Deposit Libraries Act 2003 s 9(1). Section 9(1) applies to the delivery, pursuant to regulations under s 6, of a copy of a computer program or material within s 6(2)(b) as it applies to the delivery of a copy of a work pursuant to s 1: s 9(2).

4 For the meaning of 'deposit library' see sub-para 1 NOTE 3.

5 For the meaning of 'relevant person' see sub-para 1 NOTE 27.

6 Ie an activity listed in Legal Deposit Libraries Act 2003 s 7(2). References to activities listed in s 7(2) are references to those activities whether or not done in relation to relevant material, as defined in s 7: s 10(7)(b).

7 Ibid s 10(1). Where s 10 applies to the doing of an activity in relation to a copy of a work it also applies to the doing of the activity in relation to a copy, at any remove, of that copy: s 10(9).

- 8 Ibid s 10(2).
- 9 Ie an activity listed in ibid s 7(2).
- 10 Ibid s 10(3).
- 11 Ibid s 10(4).
- 12 Ie an activity listed in ibid s 7(2).
- 13 Ie ibid s 10(1), (2).
- 14 For the meaning of 'prescribed' see sub-para 1 NOTE 6.
- 15 For the meaning of 'publication' see sub-para 1 NOTE 11.
- 16 Legal Deposit Libraries Act 2003 s 10(5), (6). The Secretary of State may by regulations provide for s 10, as it applies in relation to liability in damages and criminal liability for defamation, to apply in relation to liability, including criminal liability, of any description prescribed in the regulations, subject to such modifications as may be prescribed: s 10(8). Nothing in s 10 imposes liability on any person: s 10(10).

### **3. Regulations**

Provision is made with respect to the making of regulations under the Legal Deposit Libraries Act 2003<sup>1</sup>.

- 1 See the Legal Deposit Libraries Act 2003 ss 11, 12.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(1) THE PERSONS AND RELATIONSHIPS/(iii) Internet and On-line Service Providers; Telecommunications Providers/416. Publishing on the Internet.

### **(iii) Internet and On-line Service Providers; Telecommunications Providers**

#### **416. Publishing on the Internet.**

Where an author or publisher<sup>1</sup> makes a work available for readers to access via the Internet or other on-line network, a separate Internet or 'on-line service provider' (ISP)<sup>2</sup> may be used for hosting the work on, or otherwise operating, appropriate computer equipment<sup>3</sup> and also for facilitating access to the work through the necessary communication links provided by it and other telecommunication providers<sup>4</sup>. The relationship between the author, publisher and the ISP is governed by the contract between them<sup>5</sup>.

The ISP or telecommunications provider may be liable for the content of the work made available for access where the activities undertaken by the ISP or telecommunications provider, in connection with the work, fall within the provisions of the relevant criminal or civil law relating to the work's content<sup>6</sup>. In some cases the ISP or telecommunications provider may have a specific defence<sup>7</sup> or may be able to avoid liability by complying with a regulatory code of practice<sup>8</sup>.

Where the content of a work which an ISP is hosting or otherwise making available is, or is alleged to be, illegal or unlawful, the ISP, or if appropriate a telecommunications provider, may be requested by the police or a third party to supply information and other materials regarding the author or publisher of the work<sup>9</sup>. The contract between the ISP and the author or publisher

may set out how the ISP may respond to such requests, but in supplying such information the ISP must not breach the terms of the Data Protection Act 1984<sup>10</sup> but must comply with a warrant under the Police and Criminal Evidence Act 1984<sup>11</sup> or other compulsory court order<sup>12</sup>.

An ISP may provide additional services to an author or publisher. These may include design, development and management services<sup>13</sup>, the procurement of domain names<sup>14</sup> or the use of encryption technology<sup>15</sup>.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante. The Internet and on-line media may obscure traditional distinctions between publishers and authors: see PARA 401 ante.

2 The role of an ISP may be a distinct business operation, or the activities of an ISP may be conducted by the author or publisher or another person as an ancillary service, for example an employer: see notes 5-6 infra.

3 For a description of the possible activities involved see the Defamation Act 1996 s 1(3)(c); and LIBEL AND SLANDER vol 28 (Reissue) PARAS 62, 158.

4 For a description of the possible activities involved see ibid s 1(3)(e); and LIBEL AND SLANDER vol 28 (Reissue) PARAS 62, 158. As to telecommunications providers see TELECOMMUNICATIONS.

5 This could include a contract of employment where an employer effectively acts as an employee's ISP. For example, by providing an employee with electronic mail and other computer facilities which allow material created by, or otherwise originating from, the employee to be made available for Internet readers to access. See *Edgar and Wales v Cairn Housing Association Ltd* (27 July 1998, unreported, S/400507/98 and S/400571/98); *Parr v Derwentside District Council* (1998, unreported, 2501507/98); *Dunn v IBM UK Ltd* (1998, unreported, 2305087/97/FH); *Humphries v H Barnett & Co* (1998, unreported, 2304001/97); and note 6 infra.

6 For examples of possible criminal or civil law provisions see PARAS 417-425 post. In addition where an employer is effectively acting as an ISP for its employees, the employer may be held liable for the activities of its employees under principles of vicarious liability: see *Western Provident Association v Norwich Union Health Care and Norwich Union Life Insurance* (1997, unreported); and EMPLOYMENT. As to criminal liability for publication of defamatory, seditious, blasphemous or obscene matter see PARA 419 post. As to civil liability for publication of libel see PARA 420 post.

7 See PARAS 417-425 post. As to defences to libel and slander see LIBEL AND SLANDER vol 28 (Reissue) PARA 82 et seq. As to the statutory defence for printers, distributors and other secondary publishers see LIBEL AND SLANDER vol 28 (Reissue) PARAS 157-159. See also *Godfrey v Demon Internet Ltd* [1999] NL JR 609.

8 In the United Kingdom, a 'notice and take down' procedure is operated in relation to child pornography and certain other illegal material by the Internet Watch Foundation (IWF), which is a body funded by the United Kingdom ISP industry and supported by the United Kingdom government and law enforcement authorities. Compliance with notifications from the IWF to remove illegal content from computer systems operated by an ISP has no formal legal impact but action is unlikely to be taken against such an ISP in such circumstances. Plans are currently being considered to extend such an approach to other types of illegal and unlawful content. A proposal for an EU Directive on 'Certain Legal Aspects of Electronic Commerce in the Internet Market' has also adopted such an approach to ISP liability.

9 The legal framework relating to interception of communications on public networks set out in the Interception of Communications Act 1985 is unlikely to apply to most ISPs who will be operating private networks, although plans are currently being considered to amend this.

10 See the Data Protection Act 1984 s 28 (prospectively repealed); the Data Protection Act 1998 s 29 (not yet in force); and CONFIDENCE AND DATA PROTECTION.

11 As to search warrants see the Police and Criminal Evidence Act 1984 Pt II (ss 8-23) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 871 et seq.

12 See eg the Interception of Communications Act 1985; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 506 et seq.

13 In which case the ISP may itself be the author of elements of the work being hosted or otherwise made available for access: see PARA 401 ante.

14 Domain names (unique identifiers for material made available on the Internet) are recorded on privately operated central registers and must be applied for, allocated and registered.

15 For proposals for the licensing of such technology see the draft Electronic Communications Bill in *Promoting Electronic Commerce - Consultation on Draft Legislation and the Government's Response to the Trade and Industry Committee's Report* (Cm 4417) (1999).

## UPDATE

### 416 Publishing on the Internet

NOTE 7--See also *Metropolitan International Schools Ltd v Designtecnica Corp*n [2009] EWHC 1765 (QB), [2009] All ER (D) 263 (Jul) (internet search engine not characterised as publisher as search done automatically).

NOTE 10--Data Protection Act 1998 s 29 in force 1 March 2000: SI 2000/183.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(i) Contempt of Court Act 1981/417. The strict liability rule under the Contempt of Court Act 1981.

## (2) OFFENCES AND LIABILITIES

### (i) Contempt of Court Act 1981

#### 417. The strict liability rule under the Contempt of Court Act 1981.

The strict liability rule under the Contempt of Court Act 1981<sup>1</sup> means the rule of law whereby conduct may be treated as a contempt of court<sup>2</sup> as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so. It applies in the context of all kinds of legal proceedings, both civil and criminal<sup>3</sup>. The rule applies only in relation to publications<sup>4</sup> and only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced<sup>5</sup>.

1 As to the strict liability rule see CONTEMPT OF COURT vol 9(1) (Reissue) PARAS 410-420.

2 As to the development of contempt of court see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 403.

3 See *A-G v English* [1983] 1 AC 116 at 142, [1982] 2 All ER 903 at 919, HL, per Lord Diplock (in the context of the Contempt of Court Act 1981 s 2(2): see CONTEMPT OF COURT vol 9(1) (Reissue) PARAS 411, 413). As to criminal and civil proceedings active at the time of publication see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 415. As to the defence of innocent publication or distribution see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 417. As to the reporting of court proceedings see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 428 et seq.

4 For the meaning of 'publication' see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 412.

5 See the Contempt of Court Act 1981; and CONTEMPT OF COURT vol 9(1) (Reissue) PARAS 410-420.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(i) Contempt of Court Act 1981/418. Other instances of contempt under the Contempt of Court Act 1981.

#### 418. Other instances of contempt under the Contempt of Court Act 1981.

It is a contempt of court<sup>1</sup> to:

- 1 (1) obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings<sup>2</sup>;
- 2 (2) use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court<sup>3</sup>;
- 3 (3) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication<sup>4</sup>; and
- 4 (4) to use any such recording in contravention of any conditions of leave granted under head (2) above<sup>5</sup>.

1 As to penalties for contempt of court see the Contempt of Court Act 1981 s 14 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 502. As to the enforcement of fines imposed by certain superior courts see s 16 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 508.

2 See *ibid* s 8(1); and CONTEMPT OF COURT vol 9(1) (Reissue) PARAS 434, 451.

3 See *ibid* s 9(1)(a); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 407.

4 See *ibid* s 9(1)(b); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 429.

5 See *ibid* s 9(1)(c); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 407.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/419. Criminal liability for publication of defamatory, seditious, blasphemous or obscene matter.

## **(ii) Other Offences and Liabilities**

### **419. Criminal liability for publication of defamatory, seditious, blasphemous or obscene matter.**

It is a criminal offence to publish any defamatory, seditious or blasphemous libel, and any person responsible for the publication may be prosecuted<sup>1</sup>.

It is also an offence to publish any obscene article<sup>2</sup>, whether for gain or not, or to have an obscene article for publication for gain<sup>3</sup>. A person must not be proceeded against for an offence at common law consisting of the publication of any matter contained or embodied in the article when it is of the essence of the offence that the matter is obscene<sup>4</sup>.

A person who publishes written material inciting racial hatred is guilty of an offence<sup>5</sup>.

A person who sends, by means of a public telecommunication system<sup>6</sup>, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character<sup>7</sup>, or a person who sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system<sup>8</sup>, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale<sup>9</sup> or both<sup>10</sup>.

1 As to criminal proceedings in respect of defamatory libel see LIBEL AND SLANDER vol 28 (Reissue) PARA 288 et seq. As to civil liability for publication of libel see PARA 420 post. As to distinctions between the civil and criminal law of libel and concurrent remedies see LIBEL AND SLANDER vol 28 (Reissue) PARAS 14-15. As to civil proceedings for defamation see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 427. As to malicious falsehood see LIBEL AND SLANDER vol 28 (Reissue) PARAS 274-287. As to seditious and blasphemous libel see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 371, 372, vol 11(2) (2006 Reissue) PARA 826.

2 As to obscene publications see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 747-753. An article is deemed to be obscene if its effect, or, where it comprises two or more items, the effect of any one item, if taken as a whole, is such as to tend to deprave and corrupt persons likely (having regard to all relevant circumstances) to read, see or hear the matter contained or embodied in it: see the Obscene Publications Act 1959 s 1(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 748.

'Article' means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures: see s 1(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 747. See *R v Anderson* [1972] 1 QB 304, [1971] 3 All ER 1152, CA (where it was held that a magazine is to be taken item by item, not as a whole); *DPP v Whyte* [1972] AC 849, [1972] 3 All ER 12, HL (where it was held that habitual readers of pornography were also contemplated by this provision); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 748.

For the purposes of the Obscene Publications Act 1959 a person publishes an article who: (1) distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or (2) in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it, or, where the matter is data stored electronically, transmits that data: s 1(3) (amended by the Broadcasting Act 1990 ss 162(1), 203(3), Sch 21; and the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 3); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 747.

As to taking, making, distributing or possession of indecent photographs or pseudo-photographs of children see PARA 423 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 757-758.

3 See the Obscene Publications Act 1959 s 2(1) (amended by the Obscene Publications Act 1964 s 1(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 747. On summary conviction a person who publishes, or has, an obscene article for publication is liable to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding six months or both (Obscene Publications Act 1959 s 2(1)(a) (amended by the Magistrates' Courts Act 1980 s 32(2))), and on conviction on indictment to a fine or to imprisonment for a term not exceeding three years or both (Obscene Publications Act 1959 s 2(1)(b)). See *R v Anderson* [1972] 1 QB 304, [1971] 3 All ER 1152, CA, where imprisonment was held to be appropriate. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)): Magistrates' Courts Act 1980 s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)).

4 Obscene Publications Act 1959 s 2(4); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 747. See *Kneller (Publishing, Printing and Promotions) Ltd v DPP* [1973] AC 435, [1972] 2 All ER 898, HL, where a charge of conspiracy to corrupt public morals, a common law offence, was brought. As to outraging public decency see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 764.

5 See the Public Order Act 1986 s 19; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 563.

6 The Secretary of State may by order designate as a public telecommunication system any telecommunication system the running of which is authorised by a licence to which the Telecommunications Act 1984 s 8 applies; and any reference to a public telecommunication system is a reference to a telecommunication system which is so designated and the running of which is so authorised: see s 9(1); and TELECOMMUNICATIONS vol 97 (2010) PARAS 59-60, 104. As to the Secretary of State see PARA 401 note 15 ante.

7 Ibid s 43(1)(a).

8 Ibid s 43(1)(b).

9 As to the standard scale see PARA 412 note 1 ante.

10 Telecommunications Act 1984 s 43(1) (amended by the Criminal Justice and Public Order Act 1994 s 92). This does not apply to anything done in the course of providing a programme service (within the meaning of the Broadcasting Act 1990 (see TELECOMMUNICATIONS AND BROADCASTING)): Telecommunications Act 1984 s 43(2) (amended by the Cable and Broadcasting Act 1984 s 57, Sch 5 para 45, Sch 6; and the Broadcasting Act 1990 s 203(1), Sch 20 para 38(4)). It is thought that this offence can extend to such material transmitted over the Internet only in so far as it is sent over a public telecommunications network, and that it could apply to content providers and Internet service providers (ISP).

## UPDATE

### **419 Criminal liability for publication of defamatory, seditious, blasphemous or obscene matter**

NOTE 2--If a film contains two or more distinct items, the effect of one or more of such items can be considered pursuant to the 1959 Act s 1(1): *R v Goring* [1999] Crim LR 670, CA.

NOTE 3--In Obscene Publications Act 1959 s 2(1)(b) for 'three years' read 'five years': Criminal Justice and Immigration Act 2008 s 71. For transitional provision see Criminal Justice and Immigration Act 2008 Sch 27 para 25.

TEXT AND NOTES 7-10--1984 Act s 43 repealed: Communications Act 2003 Sch 19. See now s 127; and TELECOMMUNICATIONS vol 97 (2010) PARA 203.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/420. Civil liability for publication of libel.

### **420. Civil liability for publication of libel.**

To maintain a civil action for libel there must have been publication to a third person<sup>1</sup>. In a civil action for libel the plaintiff must allege<sup>2</sup> and prove that the defendant published, or caused to be published, 'of and concerning the plaintiff'<sup>3</sup>, the words complained of to a third person, namely to some person other than the plaintiff<sup>4</sup>.

In criminal proceedings it is sufficient if the publication is to the person defamed<sup>5</sup>.

1 As to publication to a third person see LIBEL AND SLANDER vol 28 (Reissue) PARA 61; and as to publication in libel actions generally see LIBEL AND SLANDER vol 28 (Reissue) PARA 60 et seq. There may be joint and several liability for publication of a libel: see PARA 406 note 8 ante; and LIBEL AND SLANDER vol 28 (Reissue) PARA 38. For the distinctions between the civil and criminal law of libel and concurrent remedies see LIBEL AND SLANDER vol 28 (Reissue) PARAS 14-15. As to civil proceedings for defamation see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 427. As to liability for libel published on the Internet see LIBEL AND SLANDER vol 28 (Reissue) PARAS 62, 158.

2 See LIBEL AND SLANDER vol 28 (Reissue) PARA 60. As to pleading and practice in libel and slander actions see LIBEL AND SLANDER vol 28 (Reissue) PARA 168 et seq.

3 See *O'Brien v Clement* (1846) 16 M & W 159; and LIBEL AND SLANDER vol 28 (Reissue) PARA 39.

4 See LIBEL AND SLANDER vol 28 (Reissue) PARAS 61-62.

5 See LIBEL AND SLANDER vol 28 (Reissue) PARAS 5, 60, 288 et seq. As to criminal liability for publication of defamatory, seditious, blasphemous or obscene matter see PARA 419 ante.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/421. Offence of sending unsolicited material.

### **421. Offence of sending unsolicited material.**

A person is guilty of an offence if he sends or causes to be sent to another person any book, magazine or leaflet (or advertising material for any such publication) which he knows or ought reasonably to know is unsolicited and which describes or illustrates human sexual techniques<sup>1</sup>. A prosecution for such an offence may not be instituted in England and Wales except by, or with the consent of, the Director of Public Prosecutions<sup>2</sup>. A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>3</sup>.

1 Unsolicited Goods and Services Act 1971 s 4(1). To send unsolicited advertising material for a publication describing or illustrating such matter is an offence under this provision, even if the advertising material does not itself describe such techniques: see *DPP v Beate Uhse (UK) Ltd* [1974] QB 158, [1974] 1 All ER 753. It is suggested that sending or causing is not limited to posting and may apply to content providers transmitting advertising material for books or magazines, which describe or illustrate human sexual techniques, on the Internet. Where an offence is committed by a body corporate, and it is proved that there was consent or connivance of any director, manager or similar officer, he is also guilty of the offence: see the Unsolicited Goods and Services Act 1971 s 5(1). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 769.

As to the offence of sending malicious, including indecent, communications see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 767.

2 Ibid s 4(3). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1071 et seq.

3 Ibid s 4(2) (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). As to the standard scale see PARA 412 note 1 ante.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/422. Pictorial publications harmful to children and young persons.

#### **422. Pictorial publications harmful to children and young persons.**

A person who prints, publishes, sells or lets on hire or has in his possession for the purpose of selling or letting on hire any work to which the Children and Young Persons (Harmful Publications) Act 1955 applies<sup>1</sup> is guilty of an offence<sup>2</sup>. A prosecution for such an offence must not be instituted except by or with the consent of the Attorney General<sup>3</sup>.

The court by or before which a person is convicted of such an offence with respect to a work may order any copies of that work and any plate<sup>4</sup> prepared for the purpose of printing copies of that work or photographic film<sup>5</sup> prepared for that purpose, being copies which have, or a plate or film which has, been found in his possession or under his control, to be forfeited<sup>6</sup>.

Where, on an information, a justice of the peace<sup>7</sup> issues a summons or a warrant to arrest a person suspected of an offence under the Act, then, upon written information substantiated on oath<sup>8</sup>, he or any other justice may grant a search warrant authorising any constable to enter and search any premises specified or any vehicle or stall used in connection with the business and seize any copies of the offending work<sup>9</sup>.

The importation of any such work or of any plate or photographic film prepared for the purpose of printing copies of any such work is prohibited<sup>10</sup>.

1 The Children and Young Persons (Harmful Publications) Act 1955 applies to any book, magazine or other like work which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying the commission of crimes, or acts of violence or cruelty, or incidents of a repulsive or horrible nature, in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall: s 1. 'Child' means a person under the age of 14 years: Children and Young Persons Act 1933 s 107(1); definition



applied by the Children and Young Persons (Harmful Publications) Act 1955 s 5(2). 'Young person' means a person who has attained the age of 14 and is under the age of 18 years: Children and Young Persons Act 1933 s 107(1) (definition substituted by the Criminal Justice Act 1991 s 68, Sch 8 para 1); definition applied by the Children and Young Persons (Harmful Publications) Act 1955 s 5(2).

2 Ibid s 2(1). The offence is punishable on summary conviction, by imprisonment for a term not exceeding four months or by a fine not exceeding level 3 on the standard scale or to both: s 2(1) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 412 note 1 ante. However, in any proceedings so taken against a person in respect of selling or letting on hire a work or of having it in his possession for the purpose of selling it or letting it on hire, it is a defence for him to prove that he had not examined the contents of the work and had no reasonable cause to suspect that it was one to which the Children and Young Persons (Harmful Publications) Act 1955 applies: s 2(1) proviso.

3 Ibid s 2(2). As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq.

4 'Plate' (except where it occurs in the expression 'photographic plate') includes block, mould, matrix and stencil: ibid s 5(2).

5 'Photographic film' includes photographic plate: ibid s 5(2). See note 4 supra.

6 Ibid s 3(2). However an order so made by a magistrates' court or, on appeal from a magistrates' court, by a court of quarter sessions must not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged (whether by giving notice of appeal or applying for a case to be stated for the opinion of the High Court) or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned: s 3(2) proviso. For the time-limits for appeals from a magistrate's court to the Crown Court and appeal by way of case stated see MAGISTRATES.

7 See PARA 413 note 5 ante.

8 The written information must substantiate on oath that there is reasonable ground for suspecting that the alleged offender has in his possession or under his control any copies of the work concerned or any other work to which the Children and Young Persons (Harmful Publications) Act 1955 applies (s 3(1)(a)), or any plate or photographic film prepared for printing copies (s 3(1)(b)).

9 Ibid s 3(1) (amended by the Police and Criminal Evidence Act 1984 s 119, Sch 7 Pt I). The constable may also seize any copies of any work which he reasonably believes to be one to which the Children and Young Persons (Harmful Publications) Act 1955 applies (s 3(1)(i)), and any plate or photographic film which he reasonably believes to have been prepared for printing such copies (s 3(1)(ii)). A warrant to enter and search premises may be executed by any constable: Police and Criminal Evidence Act 1984 s 16(1). As to the issue, scope and execution of search warrants see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 872, 880-882.

10 Children and Young Persons (Harmful Publications) Act 1955 s 4. As to forfeiture and penalties for improper importation see the Customs and Excise Management Act 1979 ss 49, 50 (as amended) (replacing the Customs and Excise Act 1952 ss 44, 45 (repealed)); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 993-994. By virtue of the Children and Young Persons (Harmful Publications) Act 1955 s 5(5) (repealed), the whole Act would have expired on 31 December 1965, but was made permanent by the Expiring Laws Act 1969 s 1 (repealed).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/423. Indecent photographs or pseudo-photographs of children.

#### **423. Indecent photographs or pseudo-photographs of children.**

It is an offence for a person<sup>1</sup>:

- 5 (1) to take, or permit to be taken or to make, any indecent photograph<sup>2</sup> or pseudo-photograph<sup>3</sup> of a child<sup>4</sup>;
- 6 (2) to distribute or show such indecent photographs or pseudo-photographs<sup>5</sup>;

- 7 (3) to have in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others<sup>6</sup>; or
- 8 (4) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so<sup>7</sup>.

Proceedings for an offence under these provisions must not be instituted except by or with the consent of the Director of Public Prosecutions<sup>8</sup>.

A person convicted on indictment of any such offence is liable to imprisonment for a term of not more than three years or to a fine or both<sup>9</sup>. A person convicted summarily is liable to imprisonment for a term not exceeding six months<sup>10</sup> or a fine not exceeding the prescribed sum<sup>11</sup> or to both<sup>12</sup>.

1 Protection of Children Act 1978 s 1(1).

2 References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film: *ibid* s 7(2). Photographs (including those comprised in a film), if they show children and are indecent, must be treated for all purposes of the Protection of Children Act 1978 as indecent photographs of children and so as respects pseudo-photographs: s 7(3) (amended by the Criminal Justice and Public Order Act 1994 s 84(3)(a)). References to a photograph include the negative as well as the positive version, and data stored on a computer disc or by other electronic means which is capable of conversion into a photograph: Protection of Children Act 1978 s 7(4) (substituted by the Criminal Justice and Public Order Act 1994 s 84(3)(b)). 'Film' includes any form of video-recording: Protection of Children Act 1978 s 7(5). Data held on computer disc comes within the definition of 'photograph' for the purpose of the Protection of Children Act 1978: see *R v Fellows, R v Arnold* [1997] 2 All ER 548, [1997] 1 Cr App Rep 244, CA; and PARA 419 ante.

3 'Pseudo-photograph' means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph: Protection of Children Act 1978 s 7(7) (added by the Criminal Justice and Public Order Act 1994 s 84(3)(c)). If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph must be treated for all purposes of the Protection of Children Act 1978 as showing a child and so must a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult: s 7(8) (added by the Criminal Justice and Public Order Act 1994 s 84(3)(c)). References to an indecent pseudo-photograph include a copy of an indecent pseudo-photograph, and data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph: Protection of Children Act 1978 s 7(9) (added by the Criminal Justice and Public Order Act 1994 s 84(3)(c)).

4 Protection of Children Act 1978 s 1(1)(a) (s 1(1)(a), (b), (c), (d) amended by the Criminal Justice and Public Order Act 1994 ss 84(2)(a), (b), 168(3), Sch 11). 'Child', subject to the Protection of Children Act 1978 s 7(8) (as added) (see note 3 *supra*), means a person under the age of 16: s 7(6) (added by the Criminal Justice and Public Order Act 1994 s 84(3)(c)).

5 Protection of Children Act 1978 s 1(1)(b) (as amended: see note 4 *supra*). Where a person is charged with an offence under s 1(1)(b) (as amended) or s 1(1)(c) (as amended) (see the text to note 6 *infra*), it is a defence for him to prove that he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or, as the case may be, having them in his possession, or that he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect them to be indecent: s 1(4).

6 *Ibid* s 1(1)(c) (as amended: see note 4 *supra*). See also note 5 *supra*.

7 *Ibid* s 1(1)(d) (as amended: see note 4 *supra*). A person is regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person: s 1(2) (amended by the Criminal Justice and Public Order Act 1994 s 84(2)(c), (d)). See *R v Fellows, R v Arnold* [1997] 2 All ER 548, [1997] 1 Cr App Rep 244, CA (contents of computer archive made available on the Internet; computer disk on which image held was a copy of an indecent photograph within meaning of the Protection of Children Act 1978 s 7(2)).

8 *Ibid* s 1(3). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1071 et seq.

9 *Ibid* s 6(2).

10 Ibid s 6(3)(a).

11 As to the prescribed sum see PARA 419 note 3 ante.

12 See the Protection of Children Act 1978 s 6(3)(b) (amended by the Magistrates' Courts Act 1980 Sch 7 para 171). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 757-760.

## UPDATE

### 423 Indecent photographs or pseudo-photographs of children

TEXT AND NOTES 1-7--Protection of Children Act 1978 s 1(1) further amended: Sexual Offences Act 2003 Sch 6 para 24. See further Protection of Children Act 1978 s 1A (added by Sexual Offences Act 2003 s 45(3)) (marriage and other relationships). For exception for criminal proceedings, investigations etc see Protection of Children Act 1978 s 1B (added by Sexual Offences Act 2003 s 46(1); and amended by Criminal Justice and Immigration Act 2008 s 69(2)). See further CRIMINAL EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 757.

NOTE 2--References to a photograph also include (1) a tracing or other image, whether made by electronic or other means (of whatever nature) (a) which is not itself a photograph or pseudo-photograph, but (b) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and (2) data stored on a computer disc or by other electronic means which is capable of conversion into an image within head (1); and the 1978 Act s 7(8) applies in relation to such an image as it applies in relation to a pseudo-photograph: s 7(4A) (added by Criminal Justice and Immigration Act 2008 s 69(3)). For transitional provisions and savings see Sch 27 para 24(1).

NOTE 3--See *Atkins v DPP*; *Goodland v DPP* [2000] 2 All ER 425, [2000] 1 WLR 1427, DC (two photographs taped together not a pseudo-photograph).

1978 Act s 7(9) amended: Criminal Justice and Immigration Act 2008 s 69(4).

NOTE 4--Age of 16 now age of 18: Protection of Children Act 1978 s 7(6) (amended by Sexual Offences Act 2003 s 45(2)).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/424. Agricultural charges.

### 424. Agricultural charges.

It is unlawful to print for publication, or to publish, any list of agricultural charges created pursuant to the Agricultural Credits Act 1928<sup>1</sup>, or the names of farmers who have created such charges<sup>2</sup>. Publication here means the issue of copies to the public, but the prohibition does not extend to the confidential notification by an association representative of a particular trade to its members having or carrying on business in the district in which the property charged is situated<sup>3</sup>.

1 An agricultural charge is an instrument by a farmer creating in favour of a bank a charge, either floating or fixed or both, on his farming stock or other agricultural assets: see the Agricultural Credits Act 1928 s 5(1), (2); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1328.

2 Ibid s 10(1). If any person acts in contravention of this provision, he is liable, in respect of each offence, on summary conviction to a fine not exceeding level 2 on the standard scale: s 10(2) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 412 note 1 ante. However, no person other than a proprietor, editor, master printer, or publisher, is liable to be so convicted: Agricultural Credits Act 1928 s 10(2) proviso. No prosecution may be commenced without the consent of the Attorney General: s 10(3). As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq.

3 Ibid s 10(4). However, prohibition does seem to prevent circulation of information by a general credit agency.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(2) OFFENCES AND LIABILITIES/(ii) Other Offences and Liabilities/425. False statements in relation to elections.

#### **425. False statements in relation to elections.**

Any person who, before or during an election, knowingly publishes a false statement of a candidate's withdrawal at the election for the purpose of promoting or procuring the election of another candidate is guilty of an illegal practice<sup>1</sup>.

A person who, or any director of any body or association corporate which before or during an election, for the purpose of affecting the return of any candidate at the election, makes or publishes any false statement of fact in relation to the candidate's personal character or conduct is guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true<sup>2</sup>.

1 Representation of the People Act 1983 s 106(5); and see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 683.

2 Ibid s 106(1); and see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 683.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(i) The Relationships and the Contract/426. Advertising contracts and agents.

### **(3) ADVERTISEMENTS**

#### **(i) The Relationships and the Contract**

##### **426. Advertising contracts and agents.**

Contracts for the insertion of advertisements in a newspaper or other periodical<sup>1</sup>, a magazine, Internet<sup>2</sup> site or other published media do not differ in their general legal aspect from other contracts<sup>3</sup>.

A large proportion of trade advertising is arranged through advertising agents who are retained to create advertisements for their clients' products<sup>4</sup> in the various media available; these agents are rarely agents in a legal sense but have the status of independent contractors<sup>5</sup>. Some media owners employ agents to obtain advertisements for their publications on a commission basis and such agents may be employees rather than independent contractors<sup>6</sup>.

1 See *Metzler v Gounod* (1875) 32 LT 656, where certain documents were held to constitute a contract. Where a contract was entered into for a full page of advertisements in a weekly publication, the first order to be for 12 weeks, and the space was bought by the advertiser at the rates specified in the contract for two years, it was held that there was no binding contract between the parties for an unlimited time and no notice to terminate it need be given: *Pocock v Thacker & Co* (1915) 31 TLR 388, CA.

2 As to publishing on the Internet see PARA 416 ante.

3 See generally CONTRACT.

4 This may include buying space or time.

5 See *Tranton v Astor* (1917) 33 TLR 383. In *Hawkins v Tuxford* (1867) Times, 23 December, it was held that an advertising agent was the agent of that advertiser, but it is submitted that a firm of advertising agents would not be so regarded now: *Emmett v De Witt* (1957) unreported. For the distinction between an agent and an independent contractor see AGENCY vol 1 (2008) PARA 1.

6 See eg *Sellers v London Counties Newspapers* [1951] 1 KB 784, [1951] 1 All ER 544, CA.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(i) The Relationships and the Contract/427. Damages for breach.

#### **427. Damages for breach.**

No damages can be recovered for breach of any agreement to insert an advertisement which is illegal, nor can any money be recovered which has been paid in advance for the insertion of such an advertisement<sup>1</sup>.

Where damages are recoverable they are not limited to the amount paid for the insertion of the advertisement, but may include any damage which may reasonably be presumed to have been in the contemplation of the parties at the time the contract was made, such as estimated loss of business in the case of trading advertisements<sup>2</sup>. The conditions under which advertisements are commonly accepted for publication preclude liability on the part of the publisher in the event that the advertisement does not appear<sup>3</sup>.

1 *Owen v Greenberg* (1898) Times, 10 March. As to illegal contracts see CONTRACT vol 9(1) (Reissue) PARA 869 et seq. As to illegal advertisements see PARAS 428-430 post.

2 *Marcus v Myers and Davis* (1895) 11 TLR 327; *Hawkins v Tuxford* (1867) Times, 23 December. See also DAMAGES vol 12(1) (Reissue) PARA 1113.

3 As to the validity of such disclaimers see the Unfair Contract Terms Act 1977 s 3; and CONTRACT vol 9(1) (Reissue) PARA 823.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(ii) Illegality and Statutory Provisions/428. Examples of illegal advertisements.

#### **(ii) Illegality and Statutory Provisions**

##### **428. Examples of illegal advertisements.**

Certain notices or advertisements relating to lotteries<sup>1</sup>, inciting persons to bet<sup>2</sup>, betting office or betting office facilities<sup>3</sup>, the recovery of stolen property<sup>4</sup> and public entertainment on Sunday<sup>5</sup>

are illegal, and anyone who prints or publishes them is subject to penalties. It is an offence to send, or cause to be sent, to a person under 18 years of age an advertisement inviting him to make a bet or wager<sup>6</sup>, or inviting him to borrow money<sup>7</sup>, or to incur expenses without the authority of the election agent by issuing advertisements, circulars or publications with a view to promoting or procuring the election of a candidate at an election<sup>8</sup>. It is an offence to issue an insurance advertisement contravening specified regulations<sup>9</sup>, or to publish a notice or advertisement of a public exhibition of experiments on living animals<sup>10</sup>.

It is an offence publicly to display or cause or permit to be displayed any indecent matter<sup>11</sup>, or to publish advertisements infringing the statutory provisions relating to consumer credit<sup>12</sup>.

It is unlawful to publish advertisements which contravene the Sex Discrimination Act 1975<sup>13</sup> or the Race Relations Act 1976<sup>14</sup>.

1 See the Lotteries and Amusements Act 1976 s 2 (as amended); and LICENSING AND GAMBLING vol 67 (2008) PARA 529 et seq.

2 See the Gaming Act 1968 s 42 (as amended).

3 See the Betting, Gaming and Lotteries Act 1963 s 10(5) (as amended); and LICENSING AND GAMBLING.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 305.

5 See the Sunday Observance Act 1780 s 3; and the Common Informers Act 1951 s 1 (as amended), Schedule. Advertising and printing or publishing the advertisements are separate offences: *Green v Kursaal (Southend-on-Sea) Estates Ltd* [1937] 1 All ER 732. See also LICENSING AND GAMBLING.

6 See the Betting, Gaming and Lotteries Act 1963 s 22 (as amended); and LICENSING AND GAMBLING.

7 See the Consumer Credit Act 1974 s 50(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 629.

8 See the Representation of the People Act 1983 s 75(1) (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 277. See also PARA 425 ante. A publication antagonistic to a candidate and advising electors to vote against him, but not advising them to vote for his opponent, has been held to be a 'publication to promote or procure the election of a candidate': see *R v Hailwood and Ackroyd Ltd* [1928] 2 KB 277, CCA. See also *R v Tronoh Mines Ltd* [1952] 1 All ER 697, which was considered and disapproved in *DPP v Luft* [1977] AC 962, [1976] 2 All ER 569, HL, where it was held that 'promoting' a candidate for the purposes of the Representation of the People Act 1949 s 63(1) (repealed) (see now the Representation of the People Act 1983 s 75(1) (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 277), means improving his chances of being elected.

A person must not print or publish, or cause to be printed or published, any bill, placard or poster having reference to an election or any printed document distributed for the purpose of promoting or procuring the election of a candidate, or post or cause to be posted any such bill, placard or poster, or distribute or cause to be distributed any printed document for that purpose, unless the bill, placard, poster or document bears upon its face the name and address of the printer and publisher: s 110(1). As to the necessity for the printer's name to appear generally see PARA 412 ante.

9 See the Insurance Companies Act 1982 s 72(3). The regulations referred to in the text are those made under the Insurance Companies Act 1982: see the Insurance Companies Regulations 1994, SI 1994/1516, regs 35-37.

10 See the Animals (Scientific Procedures) Act 1986 s 16(2); and ANIMALS vol 2 (2008) PARA 890.

11 See the Indecent Displays (Control) Act 1981 s 1(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 768. As to the offence of advertising a book describing human sexual techniques see the Unsolicited Goods and Services Act 1971 s 4 (as amended); para 421 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 769. As to the offence of advertising the distribution or showing of indecent photographs of children see the Protection of Children Act 1978 s 1(1) (as amended); para 423 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 757-760. The publication of the names and addresses of prostitutes may lead to criminal proceedings: *Shaw v DPP* [1962] AC 220, [1961] 2 All ER 446, HL.

12 See the Consumer Credit Act 1974 s 47; and CONSUMER CREDIT vol 9(1) (Reissue) PARA 150. These provisions do not apply to an advertisement published before 6 October 1980: s 192(2), Sch 3 para 8 (amended by the Consumer Credit Act 1974 (Commencement No 6) Order 1980, SI 1980/50, art 3).

13 See the Sex Discrimination Act 1975 s 38 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 388.

14 See the Race Relations Act 1976 s 29 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 473.

## UPDATE

### 428 Examples of illegal advertisements

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 9--1982 Act repealed, SI 1994/1516 revoked: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(ii) Illegality and Statutory Provisions/429. Illegal advertisements as to food, drugs and medical treatment.

### 429. Illegal advertisements as to food, drugs and medical treatment.

It is an offence to publish, or be a party to the publication of, an advertisement which either falsely describes any food, or which is likely to mislead as to the nature or substance or quality of any food<sup>1</sup>.

All advertisements relating to drugs and other medicinal products are regulated by the Medicines Act 1968<sup>2</sup>.

There are restrictions on the issue of advertisements likely to lead to the use, except under the instruction of a doctor or dentist, of any medicinal product or other substance or article for the treatment of human beings for certain conditions or diseases or for the purpose of procuring the miscarriage of women, or on the issue of advertisements relating to certain medicinal products for administration to human beings, or on the statements to be contained in advertisements relating to certain contraceptives, or on references to certain bodies in advertisements relating to medicinal products used for administration to human beings<sup>3</sup>.

1 Food Safety Act 1990 s 15(2); and see FOOD.

2 See the Medicines Act 1968 Pt VI (ss 92-97) (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 157-161.

3 See MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 162.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(ii) Illegality and Statutory Provisions/430. Other advertisements restricted by statute.

### **430. Other advertisements restricted by statute.**

It is an offence to publish or distribute advertisements of or for surrogacy services<sup>1</sup>, and there are restrictions as to advertisements relating to the adoption of children<sup>2</sup>. The Consumer Credit Act 1974 imposes detailed requirements relating to advertising<sup>3</sup>, and there are certain other statutory controls and codes of practice<sup>4</sup>. There are also restrictions on the issue of advertisements or circulars relating to war risk insurance<sup>5</sup> and investments<sup>6</sup>.

1 See the Surrogacy Arrangements Act 1985 s 3; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 518.

2 See the Adoption Act 1976 s 58 (as amended).

3 See the Consumer Credit Act 1974 Pt IV (ss 43-54) (as amended); and CONSUMER CREDIT vol 9(1) (Reissue) PARAS 143-150.

4 See CONSUMER CREDIT vol 9(1) (Reissue) PARAS 66-67.

5 See INSURANCE vol 25 (2003 Reissue) PARAS 808-811. As to offences in relation to advertisements concerning insurance see PARA 428 note 9 ante.

6 See the Financial Services Act 1986 ss 57, 58 (as amended).

### **UPDATE**

### **430 Other advertisements restricted by statute**

TEXT AND NOTES--It is an offence to advertise or promote tobacco products: see the Tobacco Advertising and Promotion Act 2002; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 626 et seq.

NOTE 6--Financial Services Act 1986 repealed: SI 2001/3649.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(ii) Illegality and Statutory Provisions/431. The Advertising Standards Authority and other bodies.

### **431. The Advertising Standards Authority and other bodies.**

The Advertising Standards Authority (ASA) was set up in 1962 to establish a self-regulatory framework for non-broadcast advertisements appearing in the United Kingdom. Its functions include supervising and enforcing the rules in the British Codes of Advertising and Sales Promotion<sup>1</sup> which essentially attempt to ensure that adverts and promotions are legal, decent, honest and truthful. The ASA supervises the Code on a regulatory basis. The ASA enforces its decisions by asking advertisers for an advertisement or promotion which breaks the Codes to be changed or removed from publication, or it can refer any complaint which falls directly under legislation to the appropriate law enforcement body. The ASA is however acknowledged as an 'established means' for controlling the content of non-broadcast advertisements in the Misleading Advertisements Regulations 1988<sup>2</sup>, which implement the EC Council Directive on Misleading Advertising<sup>3</sup> in the United Kingdom.



Other regulatory bodies, such as the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS)<sup>4</sup> and the Independent Television Commission (ITC)<sup>5</sup>, may also claim jurisdiction over advertising carried in certain forms of publications.

1 See the British Codes of Advertising and Sales Promotion (9th Edn) (February 1995). The Codes extend to electronic media such as the Internet. As to Codes of advertising practice see CONSUMER CREDIT vol 9(1) (Reissue) PARA 67; COMPETITION vol 18 (2009) PARA 337.

2 See the Control of Misleading Advertisements Regulations 1988, SI 1988/915 (as amended).

3 See the EC Council Directive on Misleading Advertising 84/450/EEC (OJ L250, 19.09.84, p 17). In *R v Advertising Standards Authority, ex p Insurance Service plc* [1990] 2 Admin LR 77, the ASA was held to be exercising a public law duty.

4 The ICSTIS is a non-profit making organisation which came into existence in 1986. It regulates the promotion (eg in print publications) and content of premium rate telephone services. See further TELECOMMUNICATIONS vol 97 (2010) PARA 91.

5 The ITC was established by the Broadcasting Act 1990 s 1: see TELECOMMUNICATIONS AND BROADCASTING. The ITC licenses and regulates commercial television in the United Kingdom, by setting and maintaining standards for both programmes and advertising. As to the regulation by the ITC of the television services generally see ss 1-13 (as amended); and TELECOMMUNICATIONS AND BROADCASTING. As to licences granted by the ITC see the Broadcasting Act 1996 ss 1-39 (as amended); and TELECOMMUNICATIONS AND BROADCASTING. It is thought that the ITC may have jurisdiction over certain forms of electronic on-line publishing, depending upon the interpretation of existing broadcasting legislation.

## UPDATE

### 431 The Advertising Standards Authority and other bodies

TEXT AND NOTES 1, 2--It is for the Advertising Standards Authority, not a court, to decide whether an editorial style column in a newspaper forms part of an advertisement: *R v Advertising Standards Authority Ltd, ex p Charles Robertson (Developments) Ltd* [2000] EMLR 463. Although the British Codes of Advertising and Sales Promotion lacks direct statutory effect it is 'prescribed by law' within the meaning of the European Convention on Human Rights art 10, which deals with the right to freedom of expression: *R v Advertising Standards Authority Ltd, ex p Matthias Rath BV* [2001] EMLR 581.

NOTE 3--EC Council Directive 84/450 replaced by European Parliament and EC Council Directive 2006/114: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 393 NOTE 6.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(iii) Contempt of Court by Advertising/432. Advertisements concerning litigation.

### (iii) Contempt of Court by Advertising

#### 432. Advertisements concerning litigation.

Advertisements inserted for the purpose of obtaining witnesses or evidence in pending litigation are not contempts of court, provided that they are inserted in good faith and not used for the purpose of making personal attacks<sup>1</sup>, are not intended or are likely to deter or

discourage witnesses from giving evidence<sup>2</sup>, and provided the advertisement is not a direct inducement to subornation of perjury<sup>3</sup>.

Advertisements warning the public generally, or a certain class of the public, that an action for infringement of a patent or trade mark has been commenced, or that an injunction has been granted, are not contempts of court provided the advertisements do not go into the merits of the case, nor is an advertisement asking for financial assistance from a certain trade in prosecuting an action in the result of which the whole trade has a common interest<sup>4</sup>.

1 *Paraguay Republic v Lynch* [1872] WN 48; *Plating Co v Farquharson* (1881) 17 ChD 49, CA; *Brodribb v Brodribb* (1886) 11 PD 66; *Butler v Butler* (1888) 13 PD 73.

2 *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd, Re Trade Mark No 249457* [1960] 3 All ER 289, [1960] 1 WLR 1145.

3 *Plating Co v Farquharson* (1881) 17 ChD 49, CA, disapproving *Pool v Sacheverel* (1720) 1 P Wms 675. As to subornation of perjury see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 720.

4 *Plating Co v Farquharson* (1881) 17 ChD 49, CA.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(3) ADVERTISEMENTS/(iii) Contempt of Court by Advertising/433. Liability of publisher and printer.

### **433. Liability of publisher and printer.**

In cases of advertisements involving contempt of court, the responsibility of the publisher and printer is not so heavy as that of the advertiser, for in order to commit a publisher or printer for contempt it must be shown that the advertisement on its face was such that a person of ordinary intelligence conducting a newspaper must have known that its publication was an interference with the course of justice<sup>1</sup>.

1 *Plating Co v Farquharson* (1881) 17 ChD 49, CA. As to contempt of court under the Contempt of Court Act 1981 see PARAS 417-418 ante; and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 410 et seq.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(4) REPORTS OF JUDICIAL PROCEEDINGS/434. Judicial proceedings generally.

## **(4) REPORTS OF JUDICIAL PROCEEDINGS**

### **434. Judicial proceedings generally.**

It is not lawful to print or publish, or cause or procure to be printed or published<sup>1</sup>:

- 9 (1) in relation to any judicial proceedings, any indecent matter or indecent medical, surgical or physiological details being matter or details the publication of which would be calculated to injure public morals<sup>2</sup>;
- 10 (2) in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, any particulars other than<sup>3</sup> (a) the names, addresses and occupations of the parties and

- witnesses<sup>4</sup>; (b) a concise statement of the charges, defences and countercharges in support of which evidence has been given<sup>5</sup>; (c) submissions on any point of law arising in the course of the proceedings, and the decision of the court on them<sup>6</sup>; and (d) the summing-up of the judge, the finding of the jury (if any), the judgment of the court and observations made by the judge in giving judgment<sup>7</sup>;
- 11 (3) any proceedings for declarations as to marital status, legitimacy and  
legitimation and overseas adoptions<sup>8</sup>;
- 12 (4) any proceedings<sup>9</sup> for financial provisions by one spouse against another<sup>10</sup>; or
- 13 (5) any proceedings<sup>11</sup> for declarations of parentage<sup>12</sup>.

The provisions mentioned in heads (1) and (2) above do not apply to the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication of these documents to persons concerned in the proceedings<sup>13</sup>; or to the printing or publishing of any notice or report in pursuance of directions of the court; or of any matter in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in law courts, or in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical profession<sup>14</sup>.

There are also certain restrictions on the publication of information relating to proceedings before any court sitting in private<sup>15</sup>.

1 Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1).

2 Ibid s 1(1)(a). If any person acts in contravention of the provisions of the Judicial Proceedings (Regulation of Reports) Act 1926, in respect of each offence he is liable, on summary conviction, to imprisonment for a term not exceeding four months, or to a fine not exceeding level 5 on the standard scale, or to both such imprisonment and fine: s 1(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 412 note 1 ante. No person, other than a proprietor, editor, master printer or publisher, may be liable to be convicted under these provisions: Judicial Proceedings (Regulation of Reports) Act 1926 s 1(2) proviso. No prosecution for an offence may be commenced in England and Wales by any person without the sanction of the Attorney General: s 1(3). As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq. See *Cumbria County Council v X* (1990) Times, 25 June (an injunction prohibiting publication in a wardship case involving surrogacy was lifted in respect of information brought into the public domain by parliamentary debate); and *Re W (A Minor) (Wardship: Freedom of Publication)* [1992] 1 All ER 794, [1992] 1 WLR 100, CA (placement of male ward, victim of homosexual abuse, with male homosexual foster parents held to be matter of public interest).

3 Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1)(b).

4 Ibid s 1(1)(b)(i).

5 Ibid s 1(1)(b)(ii).

6 Ibid s 1(1)(b)(iii).

7 Ibid s 1(1)(b)(iv). The particulars permitted to be published by head (2) in the text must not be contrary to the provisions of head (1) in the text: s 1(1) proviso. As to the penalty for the offence see note 2 supra.

8 See the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(d) (added by the Family Law Act 1986 s 68(1), Sch 1 para 9); and the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(3) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 19(b), Sch 3 para 1). The proceedings are under the Family Law Act 1986 Pt III (ss 55-63) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 121-124, 381; CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 264, 336-339); see the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(d) (as so added).

9 The provisions referred to are the Matrimonial Causes Act 1965 s 22 (repealed) (relating to proceedings by a wife against her husband) (Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(b) (as amended: see note 10 infra)); and the Matrimonial Causes Act 1973 s 27 (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 284) (Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(c) (as so amended)). The protection extends to any person named in a matrimonial suit, and accordingly the court has jurisdiction to grant an injunction restraining the publication of particulars of divorce proceedings other than

those allowed by the Judicial Proceedings (Regulation of Reports) Act 1926: see *Duchess of Argyll v Duke of Argyll* [1967] Ch 302, [1965] 1 All ER 611.

10 See the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(b) (amended by the Family Law Reform Act 1987 Sch 2 para 19(a), Sch 3 para 1); the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(c) (substituted by the Matrimonial Causes Act 1973 ss 53, 54, Sch 1, Sch 2 para 7(1)); and the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(3) (as amended: see note 8 supra). Section 2(1)(b) (as amended) is prospectively repealed with savings by the Family Law Act 1996 s 66(3), Sch 10 from a day to be appointed by order under s 67(3). At the date at which this volume states the law no such day had been appointed.

11 The proceedings are under the Family Law Act 1986 s 56(1) (as substituted) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 122); see the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1)(e) (as added: see note 12 infra).

12 See *ibid* s 2(1)(e) (added by the Family Law Reform Act 1987 Sch 2 para 19(a), Sch 3 para 1); and the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(3) (as amended: see note 8 supra).

13 However, see *Home Office v Harman* [1981] QB 534, [1981] 2 All ER 349, CA; *affd* [1983] 1 AC 280, [1982] 1 All ER 532, HL. A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where: (1) the document has been read to or by the court, or referred to, at a hearing which has been held in public; (2) the court gives permission; or (3) the party who disclosed the document and the person to whom the document belongs agree: CPR 31.22(1). The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public: CPR 31.22(2). An application for such an order may be made by a party, or by any person to whom the document belongs: CPR 31.22(3). As from 26 April 1999, the Civil Procedure Rules (CPR) replace the Rules of the Supreme Court and the County Court Rules. See CIVIL PROCEDURE.

14 See the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(4). The practice of assisting law reporters and press reporters concerned with day-by-day reporting by showing them documents so that details can be checked should be regarded, in the interests of fair and accurate reporting, as being for the immediate purpose of the litigation and not as collateral or ulterior to it, since accurate reporting is in the interests of justice: *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 at 327, [1982] 1 All ER 532 at 555, HL, per Lord Roskill.

15 See the Administration of Justice Act 1960 s 12 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 431.

## UPDATE

### 434 Judicial proceedings generally

NOTES--A defendant who is in breach of the 1926 Act s 1 is entitled to plead the defence of qualified privilege or any other recognised common law defence: *Nicol v Caledonian Newspapers Ltd* 2002 SLT 109, OH.

TEXT AND NOTE 3--For 'or for restitution of conjugal rights' substitute 'or for the dissolution or annulment of a civil partnership or for the separation of civil partners': 1926 Act s 1(1)(b) (amended by Civil Partnership Act 2004 Sch 27 para 8(2)).

TEXT AND NOTE 8--See further 1968 Act s 2(1)(da), (db) (added by Civil Partnership Act 2004 Sch 27 para 29(2)).

NOTE 8--1968 Act s 2(3) further amended: Child Support, Pensions and Social Security Act 2000 Sch 9 Pt IX; Civil Partnership Act 2004 Sch 27 para 29(3).

TEXT AND NOTES 11, 12--1968 Act s 2(1)(e) repealed: Child Support, Pensions and Social Security Act 2000 Sch 9 Pt IX.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(4) REPORTS OF JUDICIAL PROCEEDINGS/435. Reports of family proceedings in magistrates' courts.

#### **435. Reports of family proceedings in magistrates' courts.**

In relation to family proceedings in a magistrates' court<sup>1</sup>, it is not lawful for<sup>2</sup>: (1) the proprietor, editor or publisher of a newspaper or periodical<sup>3</sup> to print or publish, or cause or procure to be printed or published, in it<sup>4</sup>; or (2) any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper<sup>5</sup> to include, or cause or procure to be included, in a programme included in a programme service<sup>6</sup> for reception in Great Britain<sup>7</sup>, any particulars of the proceedings other than the following<sup>8</sup>:

- 14 (a) the names, addresses and occupations of the parties and witnesses<sup>9</sup>;
- 15 (b) the grounds of the application, and a concise statement of the charges, defences and countercharges in support of which evidence has been given<sup>10</sup>;
- 16 (c) submissions on any point of law arising in the course of the proceedings and the decision of the court on the submissions<sup>11</sup>;
- 17 (d) the decision of the court, and any observations made by the court in giving it<sup>12</sup>.

However, nothing prohibits the printing or publishing of any matter in a newspaper or periodical of a technical character which is intended in good faith for circulation among members of the legal or medical professions<sup>13</sup>.

The penalty for contravention of these provisions is on summary conviction a fine not exceeding level 4 on the standard scale<sup>14</sup>.

1    Ile other than under the Adoption Act 1976: see the Magistrates' Courts Act 1980 s 71(1) (as substituted and amended: see note 2 infra). As to adoption see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 323 et seq.

2    Ibid s 71(1) (substituted by the Broadcasting Act 1990 s 203(1), Sch 20 para 29(2); and amended by the Children Act 1989 s 92, Sch 11 para 8).

3    Magistrates' Courts Act 1980 s 71(1B)(a) (s 71(1A), (1B) added by the Broadcasting Act 1990 Sch 20 para 29(2)).

4    Magistrates' Courts Act 1980 s 71(1)(a) (as substituted: see note 2 supra).

5    Ibid s 71(1B)(b) (as added: see note 3 supra).

6    Ile within the meaning of the Broadcasting Act 1990 s 201 (as amended) (see TELECOMMUNICATIONS AND BROADCASTING): see the Magistrates' Courts Act 1980 s 71(1)(b) (as substituted: see note 2 supra).

7    Ibid s 71(1)(b) (as substituted: see note 2 supra). For the meaning of 'Great Britain' see PARA 401 note 19 ante.

8    Ibid s 71(1) (as substituted: see note 2 supra).

9    Ibid s 71(1A)(a) (as added: see note 3 supra). In the case of family proceedings in a magistrates' court under the Adoption Act 1976 (see note 1 supra), the Magistrates' Courts Act 1980 s 71(1A) (as added) applies with the omission of s 71(1A)(a), (b) (as added) and the reference in s 71(1A) (as added) to the particulars of the proceedings, in relation to any child concerned in the proceedings, includes: (1) the name, address or school of the child; (2) any picture as being, or including, a picture of the child; and (3) any other particulars calculated to lead to the identification of the child: s 71(2) (amended by the Children Act 1989 Sch 11 para 8; and the Broadcasting Act 1990 Sch 20 para 29(2)). As to the restrictions in respect of proceedings in youth courts see PARA 436 post.

10 Magistrates' Courts Act 1980 s 71(1A)(b) (as added: see note 3 supra).

11 Ibid s 71(1A)(c) (as added: see note 3 supra).

12 Ibid s 71(1A)(d) (as added: see note 3 supra).

13 Ibid s 71(5).

14 Ibid s 71(3) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 412 note 1 ante. No prosecution for an offence under these provisions may be commenced without the consent of the Attorney General: Magistrates' Courts Act 1980 s 71(4). As to Her Majesty's Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529 et seq.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(4) REPORTS OF JUDICIAL PROCEEDINGS/436. Youth courts and witnesses.

### **436. Youth courts and witnesses.**

In relation to proceedings in a youth court<sup>1</sup>, proceedings on appeal from a youth court (including proceedings by way of case stated)<sup>2</sup>, proceedings for varying or revoking supervision orders<sup>3</sup>, and proceedings on appeal from a magistrates' court arising out of proceedings for varying or revoking supervision orders<sup>4</sup> (including proceedings by way of case stated)<sup>5</sup>: (1) no report<sup>6</sup> may be published which reveals the name, address or school of any child or young person concerned<sup>7</sup> in the proceedings or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings<sup>8</sup>; and (2) no picture may be published or included in a programme service<sup>9</sup> as being or including a picture of any child or young person concerned in the proceedings<sup>10</sup>.

However, a court may, in relation to proceedings before it, by order dispense to any specified<sup>11</sup> extent with the requirements in relation to a child or young person who is concerned in the proceedings if it is satisfied<sup>12</sup>: (a) that it is appropriate to do so for the purpose of avoiding injustice to the child or young person<sup>13</sup>; or (b) that, as respects a child or young person who is charged with or has been convicted of a violent offence<sup>14</sup>, a sexual offence<sup>15</sup>, or an offence punishable in the case of a person aged 21 years or over with imprisonment for 14 years or more<sup>16</sup>, who is unlawfully at large<sup>17</sup>, it is necessary to dispense with those requirements for the purpose of apprehending him and bringing him before a court or returning him to the place in which he was in custody<sup>18</sup>.

If a report or picture is published or included in a programme service in contravention of head (1) or head (2) above<sup>19</sup>: (i) in the case of publication of a written report or a picture as part of a newspaper, any proprietor, editor or publisher of the newspaper<sup>20</sup>; and (ii) in the case of the inclusion of a report or picture in a programme service, any body corporate which provides the service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper<sup>21</sup>, is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>22</sup>.

In relation to any proceedings in any court, the court may direct that<sup>23</sup>: (A) no newspaper report of the proceedings, or sound or television broadcast, may reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings as a party or a witness<sup>24</sup>; and (B) no picture is to be published in any newspaper or shown on any television broadcast as being or including a picture of any child or young person so concerned in the proceedings<sup>25</sup>. Any person who contravenes the court's direction is on summary conviction liable in respect of each offence to a fine not exceeding level 5 on the standard scale<sup>26</sup>.

A published notice stating the result of proceedings before examining justices and containing particulars of the person to whom the proceedings related<sup>27</sup> must not contain the name or address of any person under the age of 18 years unless the justices in question have stated that in their opinion he would be mentioned in the notice if he were not such a person and that he should be mentioned in it for the purpose of avoiding injustice to him<sup>28</sup>.

1 Children and Young Persons Act 1933 s 49(2)(a) (s 49 substituted by the Criminal Justice and Public Order Act 1994 s 49). As to the constitution of youth courts see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1263-1276.

2 Children and Young Persons Act 1933 s 49(2)(b) (as substituted: see note 1 supra).

3 Ibid s 49(2)(c) (as substituted: see note 1 supra), which refers to proceedings under the Children and Young Persons Act 1969 s 15 (as substituted and amended) or s 16 (as amended). As to the application of the Children and Young Persons Act 1933 s 49 (as substituted and amended) to these proceedings see s 49(10) (as substituted); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1272.

4 I.e. proceedings under the Children and Young Persons Act 1969 s 15 (as substituted and amended) or s 16 (as amended): see the Children and Young Persons Act 1933 s 49(2)(d) (as substituted: see note 1 supra).

5 Ibid s 49(2)(d) (as substituted: see note 1 supra).

6 The reports are reports in a newspaper and reports included in a programme service; and similarly as respects pictures: ibid s 49(3) (as substituted: see note 1 supra). As to the admission of newspaper reporters to youth courts see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1267.

7 For the meaning of 'child' see PARA 422 note 1 ante. For the meaning of 'young person' see PARA 422 note 1 ante. A child or young person is 'concerned' in any proceedings whether as being the person against or in respect of whom the proceedings are taken or as being a witness in the proceedings: ibid s 49(4) (as substituted: see note 1 supra).

8 Ibid s 49(1)(a) (as substituted: see note 1 supra).

9 For these purposes 'programme' and 'programme service' have the same meanings as in the Broadcasting Act 1990 ss 201 (as amended), 202(1) (see TELECOMMUNICATIONS AND BROADCASTING): Children and Young Persons Act 1933 s 49(11) (as substituted: see note 1 supra).

10 Ibid s 49(1)(b) (as substituted: see note 1 supra).

11 'Specified' means specified in an order under ibid s 49 (as substituted and amended): s 49(11) (as substituted: see note 1 supra).

12 Ibid s 49(5) (as substituted: see note 1 supra). The court's power under this provision may be exercised by a single justice: s 49(8) (as so substituted). As to dispensing with requirements in relation to proceedings if a court is satisfied that it is in the public interest to do so see s 49(4A), (4B) (added by the Crime (Sentences) Act 1997 s 45); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1272.

13 Children and Young Persons Act 1933 s 49(5)(a) (as substituted: see note 1 supra).

14 For these purposes 'violent offence' has the same meaning as in the Criminal Justice Act 1991 s 31(1): Children and Young Persons Act 1933 s 49(11) (as substituted: see note 1 supra).

15 For these purposes 'sexual offence' has the same meaning as in the Criminal Justice Act 1991 s 31(1) (definition as substituted): Children and Young Persons Act 1933 s 49(11) (as substituted: see note 1 supra).

16 Ibid s 49(6) (as substituted: see note 1 supra).

17 A person who, having been granted bail, is liable to arrest (whether with or without a warrant) is treated as unlawfully at large: ibid s 49(11) (as substituted: see note 1 supra).

18 Ibid s 49(5)(b) (as substituted: see note 1 supra). The court must not exercise its power under head (b) above except in pursuance of an application by or on behalf of the Director of Public Prosecutions, and unless notice of the application has been given by the Director of Public Prosecutions to any legal representative of the child or young person: s 49(7) (as substituted: see note 1 supra). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1071 et seq. 'Legal representative' means an authorised advocate or authorised litigator, as defined by the Courts and Legal Services Act 1990 s

119(1) (see LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498): Children and Young Persons Act 1933 s 49(11) (as substituted: see note 1 supra).

19 Ibid s 49(9) (as substituted: see note 1 supra).

20 Ibid s 49(9)(a) (as substituted: see note 1 supra).

21 Ibid s 49(9)(b) (as substituted: see note 1 supra).

22 Ibid s 49(9) (as substituted: see note 1 supra). As to the standard scale see PARA 412 note 1 ante.

23 Ibid s 39(1) (amended by the Children and Young Persons Act 1963 ss 57(1), 64(3), Sch 5); Children and Young Persons Act 1963 s 57(4).

24 Children and Young Persons Act 1933 s 39(1)(a); Children and Young Persons Act 1963 s 57(4).

25 Children and Young Persons Act 1933 s 39(1)(b); Children and Young Persons Act 1963 s 57(4).

26 Children and Young Persons Act 1933 s 39(2) (amended by virtue of the Criminal Justice Act 1982 ss 39, 46, Sch 3).

27 Is a notice under the Magistrates' Courts Act 1980 s 6(5) (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 676): see s 6(6) (as amended: see note 28 infra).

28 Ibid s 6(6) (amended by the Criminal Justice Act 1991 s 68, Sch 8 para 6).

## UPDATE

### 436 Youth courts and witnesses

TEXT AND NOTES 3, 5--Children and Young Persons Act 1933 s 49(2)(c), (d) substituted, s 49(10) amended to refer to youth rehabilitation orders: Criminal Justice and Immigration Act 2008 Sch 4 para 3(1), (2), (4).

NOTE 14--'Violent offence' now means an offence listed in the Criminal Justice Act 2003 Sch 15 Pt 1: Children and Young Persons Act 1933 s 49(11) (amended by the 2003 Act Sch 32 Pt 1).

NOTE 15--'Sexual offence' now means an offence listed in the 2003 Act Sch 15 Pt 2: 1933 Act s 49(11) (amended by the 2003 Act Sch 32 Pt 1).

NOTE 18--Definition of 'legal representative' repealed: Legal Services Act 2007 Sch 21 para 19, Sch 23.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/1. PUBLISHING AND PUBLICATIONS/(4) REPORTS OF JUDICIAL PROCEEDINGS/437. Photographing or sketching in court.

### 437. Photographing or sketching in court.

It is an offence to take or attempt to take in any court<sup>1</sup> any photograph, or, with a view to publication, to make or attempt to make in any court any portrait or sketch, of a judge<sup>2</sup> of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal<sup>3</sup>. It is also an offence to publish any photograph, portrait or sketch taken or made in contravention of these provisions or any reproduction of one<sup>4</sup>.

A photograph, portrait or sketch is deemed to be taken or made in court if it is taken or made in the court-room or in the building, or in the precincts of the building, in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering



or leaving the court-room or the building, or the precincts of the building in which the court is held<sup>5</sup>. If any person acts in contravention of these provisions he is liable, on summary conviction, in respect of each offence to a fine not exceeding level 3 on the standard scale<sup>6</sup>.

1 'Court' means any court of justice, including a coroner's court: Criminal Justice Act 1925 s 41(2)(a). It includes a church when it is being used as a consistory court: *Re St Andrews, Heddington* [1977] 3 WLR 286, [1978] Fam 121.

2 'Judge' includes a registrar, magistrate, justice and coroner: Criminal Justice Act 1925 s 41(2)(b) (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV).

3 Criminal Justice Act 1925 s 41(1)(a).

4 Ibid s 41(1)(b).

5 Ibid s 41(2)(c). Apart from these provisions, it is a contempt of court to publish the photograph of an accused person where it is reasonably clear that a question of identity may arise, and where the publication is calculated to prejudice a fair trial. See CONTEMPT OF COURT vol 9(1) (Reissue) PARA 409.

6 Ibid s 41(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 412 note 1 ante.

## UPDATE

### 437 Photographing or sketching in court

NOTE 1--As from 1 October 2009 (see SI 2009/1640) the expression 'court' means any court of justice (including the court of a coroner), apart from the Supreme Court: Criminal Justice Act 1925 s 41(2)(a) (substituted by Constitutional Reform Act 2005 s 47(1)).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(i) Property in Newspapers/438. Meaning of 'property'.

## 2. NEWSPAPERS AND THE PRESS

### (1) NEWSPAPERS

#### (i) Property in Newspapers

#### 438. Meaning of 'property'.

Generally, the expression 'property' with regard to a newspaper may include several things. It may include the copyright in numbers already published and the right of reproduction, or it may include the plant and materials necessary for its production, but, for the purpose of this part of the title, the expression applies only to the right of publication under a particular name<sup>1</sup>.

1 It may, of course, in particular instances, include the premises where the paper is printed and published, but these are matters which do not come within the scope of this title.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(i) Property in Newspapers/439. Protection of title of publication.

### 439. Protection of title of publication.

There is no proprietary right in the names or words in the title of a publication itself, but there is such a right in the goodwill established through the use of the title<sup>1</sup>. There is no copyright in the title of a publication<sup>2</sup>. However, using the name of a well-known publication with the object of inducing the public to purchase it in mistake for the established publication amounts to passing-off, and may be restrained by injunction<sup>3</sup>. Such an injunction will only be granted if the right to the exclusive use of certain words as applying to a particular newspaper has been acquired by such use as leads to reputation<sup>4</sup>. In determining whether property in a title has been so acquired the court must take into account all the facts, including the length of time the title in question has been published<sup>5</sup>. A proprietary right in a title may be lost through lack of use<sup>6</sup>.

The use of a name will be restrained if it leads to confusion in the mind of the public or in the minds of its advertisers or contributors so as to cause injury to the proprietors of the established publication<sup>7</sup>. The injury may affect the reputation of the newspaper or cause injury to the proprietors of the established publication. An injunction will not be granted if, despite similarities in name, the publications are so different in style, content and price as to preclude any possibility of confusion on the part of the public<sup>8</sup>. Some actual injury or probability of actual injury must be proved, and the damage must be quantifiable<sup>9</sup> for an injunction to be granted, even where the names are identical<sup>10</sup>.

1 See *Spalding & Bros v AW Gamage Ltd* (1915) 84 LJ Ch 449, HL, per Lord Parker of Waddington. The value of the name taken over and the period during which that value is likely to survive will differ from case to case, and a name which is unusual or distinctive is likely to exercise its power for longer than a common-place name: *Norman Kark Publications Ltd v Odhams Press Ltd* [1962] 1 All ER 636 at 641, [1962] 1 WLR 380 at 385 per Wilberforce J. As to goodwill as a species of personal property see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1202, 1206-1210.

2 There may be copyright in the title of a newspaper if the title constitutes a literary composition: see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 70. 'To be the subject of copyright the matter must be original, ... a composition of the author ... The product of something which ... applied to patent rights would be called invention': see *Dicks v Yates* (1881) 18 ChD 76 at 92, CA, per Lush LJ. However, 'original literary work' as used in the Copyright Act 1956 s 2(1) (repealed), is a composite expression, and a made-up word cannot in itself constitute such a word: see *Exxon Corp v Exxon Insurance Consultants International Ltd* [1982] Ch 119, [1981] 3 All ER 241, CA.

3 See CIVIL PROCEDURE vol 11 (2009) PARA 447. As to passing-off see generally COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 14.

4 See *Licensed Victuallers' Newspaper Co v Bingham* (1888) 38 ChD 139, CA; *Maxwell v Hogg, Hogg v Maxwell* (1867) 2 Ch App 307.

5 *Licensed Victuallers' Newspaper Co v Bingham* (1888) 38 ChD 139, CA, where a publication of three days, with a small number of copies, was held not to suffice to amount to reputation in which there could be a property right.

6 See *Norman Kark Publications Ltd v Odhams Press Ltd* [1962] 1 All ER 636, [1962] 1 WLR 380, where the lapse in use of the title 'Today' for a period of seven years was held to extinguish a proprietary right, since there was no longer a sufficient element of distinctiveness attached to the name which the law could protect.

7 An action for passing-off will lie whether there is an intention to deceive the public or not: see *Clement v Maddick* (1859) 1 Giff 98, and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 14. In order to obtain an interlocutory injunction there must be clear evidence that confusion is likely to be caused: *Brittain Publishing Co (London) Ltd v Trade and Commercial Press Ltd* [1957] RPC 271; *Pearl Cooper Ltd v Richmond Hill Press Ltd* [1957] RPC 363.

8 *Morning Star Co-operative Society Ltd v Express Newspapers Ltd* [1979] FSR 113, where Foster J held that the difference between 'Morning Star' and 'Daily Star' was so striking that only a man in a hurry would be misled.

9 See *Morning Star Co-operative Society Ltd v Express Newspapers Ltd* [1979] FSR 113.

10 *Borthwick v Evening Post* (1888) 37 ChD 449, CA; *George Outram & Co Ltd v London Evening Newspapers Co Ltd* (1911) 27 TLR 231.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(i) Property in Newspapers/440. Right of publication as property.

#### **440. Right of publication as property.**

The right to publish a newspaper under a particular name amounts to a property right and is subject to the ordinary law of property<sup>1</sup>. It is personal property, and, as such, on the bankruptcy<sup>2</sup> or death of the proprietor<sup>3</sup>, passes to the trustees in bankruptcy or to the personal representative, as the case may be.

1 *Longman v Tripp* (1805) 2 Bos & PNR 67; *Kelly v Hutton* (1868) 3 Ch App 703; *Re Baldwin, ex p Foss* (1858) 2 De G & J 230. As to copyright as personal property see PERSONAL PROPERTY vol 35 (Reissue) PARA 1204. As to trade marks as personal property see PERSONAL PROPERTY vol 35 (Reissue) PARA 1202; TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARAS 126-137.

2 See *Longman v Tripp* (1805) 2 Bos & PNR 67; *Re Baldwin, ex p Foss* (1858) 2 De G & J 230. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 424.

3 *Gibblett v Read* (1744) 9 Mod Rep 459. See also EXECUTORS AND ADMINISTRATORS; PERSONAL PROPERTY vol 35 (Reissue) PARAS 1263-1264.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(i) Property in Newspapers/441. Ownership and rights of co-owners.

#### **441. Ownership and rights of co-owners.**

The property in a newspaper may belong to a number of persons, not exceeding 20<sup>1</sup>, or to a company, but it must belong to a definite person or body of persons<sup>2</sup>.

The legal relations between joint proprietors of a newspaper do not differ from those of partners in other enterprises, so that a majority of partners may not use the partnership property for purposes inimical to the welfare of the partnership newspaper, even where by the partnership deed the majority may bind the minority<sup>3</sup>.

The right of publication being a partnership asset, no partner, on a dissolution of the partnership, has the right to announce that publication is about to be discontinued. If necessary, the right of publication must be sold for the benefit of all the partners<sup>4</sup>.

1 No company or partnership consisting of more than 20 persons may be formed for the purpose of carrying on any business, unless it is a registered company under the Companies Act 1985: see s 716(1); and PARTNERSHIP vol 79 (2008) PARA 29 et seq.

2 *Nazarbek v Sevasley* (1896) Times, 5 December.

3 See PARTNERSHIP vol 79 (2008) PARA 106 et seq.

4 *Bradbury v Dickens* (1859) 27 Beav 53.

## UPDATE

### 441 Ownership and rights of co-owners

NOTE 1--Companies Act 1985 s 716(1) repealed: Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002, SI 2002/3203.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(ii) Transfer of Property in Newspapers/442. Assignment and its effect.

## (ii) Transfer of Property in Newspapers

### 442. Assignment and its effect.

Property<sup>1</sup> in a newspaper is a chattel interest capable of assignment<sup>2</sup>, and a contract to assign a share of it may be specifically enforced<sup>3</sup>.

The value of the property being in its title and reputation, the whole title upon assignment becomes the property of the assignee, even if it includes the name of the assignor<sup>4</sup>. The assignor may be restrained from publishing notices or advertisements likely to damage the property he has assigned, although he may publish a statement that he has ceased to be connected with the publication<sup>5</sup>.

The fact that the name of the editor is printed beneath the title does not make the name part of the title<sup>6</sup>.

1 For the meaning of 'property' see PARA 438 ante.

2 *Kelly v Hutton* (1868) 3 Ch App 703; *Longman v Tripp* (1805) 2 Bos & PNR 67; *Re Baldwin, ex p Foss* (1858) 2 De G & J 230. See also generally CHOSER IN ACTION vol 13 (2009) PARA 13 et seq.

3 *Hutton v Beeton and M'Murray, Beeton v M'Murray and Hutton* (1863) 9 Jur NS 1310.

4 *Ward v Beeton* (1874) LR 19 Eq 207. As to covenants not to publish a rival publication see PARA 401 note 11 ante.

5 *Bradbury v Dickens* (1859) 27 Beav 53.

6 *Crookes v Petter* (1860) 3 LT 225.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(ii) Transfer of Property in Newspapers/443. Restraint of trade on sale.

### 443. Restraint of trade on sale.

A newspaper is deemed to be published<sup>1</sup> when and where it is offered for sale or distribution to the public, and may be published in more than one place simultaneously<sup>2</sup>.

Any provisions restricting the vendors of a newspaper or other publication from carrying on the business of printing or publishing in the area in which the newspaper or publication being sold is published must not be unduly restrictive<sup>3</sup>.

1 In a Canadian case it was held that if a newspaper is posted to a subscriber it is published where it is posted: *Grossman v Canada Cycle Co* (1902) 23 CLT 48.

2 See *McFarlane v Hulton* [1899] 1 Ch 884.

3 *McFarlane v Hulton* [1899] 1 Ch 884, where the vendors of 'Bell's Life in London', a sporting paper, entered into an agreement not to print or publish any sporting paper within ten miles of Bouverie Street and they printed a newspaper in Manchester but distributed copies in London, some of these being sold from an office in Fleet Street; it was held that they were in breach of their agreement, and an injunction was granted against them.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(ii) Transfer of Property in Newspapers/444. Mortgage; registration of mortgagee.

#### **444. Mortgage; registration of mortgagee.**

Property in the name of a newspaper, or a share of it, may be the subject of mortgage<sup>1</sup>.

A mortgagee must register himself as the proprietor<sup>2</sup>, for if he permits the name of the mortgagor to remain upon the register<sup>3</sup> and the mortgagor becomes bankrupt, the right of publication may be held to be in the order and disposition of the bankrupt<sup>4</sup>, even if the printing machines and other tangible effects covered by the mortgage have been seized by the sheriff in process of execution<sup>5</sup>.

A receiver and manager may be appointed to print, publish and edit a newspaper<sup>6</sup>.

1 There is no property in the name of a publication, but only in the business goodwill attached to the name: see PARA 439 ante. The goodwill of a business, as a type of personal property, may be charged: see PERSONAL PROPERTY vol 35 (Reissue) PARA 1207. The owner or co-owner of a newspaper may, of course, mortgage his shares: see generally MORTGAGE vol 77 (2010) PARA 101 et seq. As to the mortgagee's entitlement to the goodwill attached to mortgaged premises see MORTGAGE vol 77 (2010) PARA 198.

2 However, as to the restrictions on transfer of property in newspapers to certain categories of proprietor see PARA 445 post.

3 As to the register see PARA 446 post.

4 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARAS 424, 458.

5 *Re Baldwin, ex p Foss* (1858) 2 De G & J 230, a copyright action. See also EXECUTION.

6 *Chaplin v Young* (1862) 6 LT 97. See also *Robertson v Norris* (1859) 5 Jur NS 1238. See generally RECEIVERS vol 39(2) (Reissue) PARA 301 et seq, 482 et seq.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(ii) Transfer of Property in Newspapers/445. Prohibition of certain newspaper mergers.

#### 445. Prohibition of certain newspaper mergers.

A transfer of a newspaper<sup>1</sup> or of newspaper assets<sup>2</sup> to a newspaper proprietor<sup>3</sup> whose newspapers have an average circulation per day of publication<sup>4</sup> amounting, together with that of the newspaper concerned in the transfer<sup>5</sup>, to 500,000<sup>6</sup> or more copies, is unlawful<sup>7</sup> and void unless the transfer is made with written consent given conditionally or unconditionally by the Secretary of State<sup>8</sup>. However, his consent must not be given until after he has received a report on the matter from the Competition Commission<sup>9</sup>.

Where the Secretary of State is satisfied<sup>10</sup> that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then<sup>11</sup>: (1) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission<sup>12</sup>; (2) if he is satisfied that the newspaper is not intended to continue as a separate newspaper, he must give his consent to the transfer, and must give it unconditionally without requiring such a report<sup>13</sup>.

Where an application is made to the Secretary of State for his consent to such a transfer he must within one month after receiving the application refer the matter to the Commission for investigation and report<sup>14</sup>, and within such period (not being longer than the three months beginning with the date of the reference) as may be specified in the reference<sup>15</sup>, the Commission must report whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and in particular the need for accurate presentation of news and free expression of opinion<sup>16</sup>.

If on such a reference the Commission has not made its report before the end of the period specified in the newspaper merger reference or of any further period allowed<sup>17</sup>, the Secretary of State may, without waiting for the report, give his consent to the transfer to which the reference relates<sup>18</sup>.

1 'Newspaper' means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom: Fair Trading Act 1973 s 57(1)(a). For the meaning of 'United Kingdom' see PARA 401 note 19 ante.

2 'Transfer of a newspaper or of newspaper assets' means: (1) any transaction (whether involving a transfer or not) by virtue of which a person would become, or would acquire the right to become an actual proprietor of a newspaper, or a person with a primary or secondary controlling interest in an actual proprietor of a newspaper; (2) any transfer of assets necessary to the continuation of a newspaper as a separate newspaper (including goodwill or the right to use the name of the newspaper) (see PARA 439 ante); (3) any transfer of plant or premises used in the publication of a newspaper, other than a transfer made without a view to a change in the ownership or control of the newspaper or to its ceasing publication: *ibid* s 57(2) (amended by the Deregulation and Contracting Out Act 1994 s 8(3), (6)). 'The newspaper concerned in the transfer', in relation to any transaction falling within heads (1), (2) or (3) *supra*, means the newspaper in relation to which (as mentioned in that head) the transaction is or is to be effected: Fair Trading Act 1973 s 57(2).

For the purposes of s 57 (as amended), a person 'A' has a secondary controlling interest in a body corporate 'B' if, without having a primary controlling interest in B: (a) A has a primary controlling interest in a body corporate which has a primary controlling interest in B; or (b) A is connected to B by a chain of any number of other bodies corporate, in the first of which A has a primary controlling interest, in the second of which the first has a primary controlling interest, and so on, the last such body corporate having a primary controlling interest in B: s 57(5) (s 57(5)-(7) added by the Deregulation and Contracting Out Act 1994 s 8(5), (6)). For the purposes of s 57 (as amended), a group of persons consists of any number of persons of whom the first is (i) a person other than a body corporate; or (ii) a body corporate in which no other person has a primary controlling interest, and the others are the bodies corporate in which the first has a primary or secondary controlling interest: Fair Trading Act 1973 s 57(6) (as so added). In determining for the purposes of head (ii) *supra* whether a body corporate 'X' is one in which another person has a primary controlling interest, there must be disregarded any body corporate in which X has a primary or secondary controlling interest: s 57(7) (as so added).

3 'Newspaper proprietor' includes (in addition to an actual proprietor of a newspaper) any member of a group of persons of which another member is an actual proprietor of a newspaper: *ibid* s 57(1)(b) (substituted

by the Deregulation and Contracting Out Act 1994 s 8(2), (6)). Any reference to the newspapers of a newspaper proprietor (NP) is to: (1) all newspapers of which NP is an actual proprietor; and (2) all newspapers of which a member of a group of persons of which NP is a member is an actual proprietor: Fair Trading Act 1973 s 57(1A) (added by the Deregulation and Contracting Out Act 1994 s 8(2), (6)). For the purposes of the Fair Trading Act 1973 s 57 (as amended), a person has a primary controlling interest in a body corporate if, but only if, he can, directly or indirectly, determine the manner in which one-quarter of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights: s 57(4) (amended by the Deregulation and Contracting Out Act 1994 s 8(4), (6)).

4 'Average circulation per day of publication' in relation to a newspaper means its average circulation for the appropriate period, ascertained by dividing the number of copies to which its circulation amounts for that period by the number of days on which it was published during that period (circulation being calculated on the basis of actual sales in the United Kingdom of the newspaper as published on those days): Fair Trading Act 1973 s 57(3). 'The appropriate period' means: (1) in a case in which an application is made for consent under s 58 (as amended), the period of six months ending six weeks before the date of the application; or (2) in a case in which a transfer or purported transfer is made without any such application for consent, the period of six months ending six weeks before the date of the transfer or purported transfer: s 57(3)(a), (b).

5 See note 2 *supra*.

6 The Secretary of State may by order made by statutory instrument provide that, for the number of 500,000, there be substituted such other number as is specified in the order: see the Fair Trading Act 1973 s 58(5). See also the Fair Trading Act (Amendment) (Newspaper Mergers) Order 1995, SI 1995/1351. As to the Secretary of State see PARA 401 note 15 *ante*.

7 Where the transfer of a newspaper or newspaper assets is unlawful under this provision unless made with the consent of the Secretary of State, then any person who is knowingly concerned in or privy to any purported transfer of it or them without the required consent is guilty of an offence (see the Fair Trading Act 1973 s 62(1)), as is any person who is knowingly concerned in or privy to any breach of a condition subject to which such consent is given (s 62(2)). Any such person is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both (s 62(3)), although no proceedings may be instituted except by or with the consent of the Director of Public Prosecutions (see s 62(4)). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1071 *et seq*.

8 *Ibid* s 58(1).

9 See *ibid* s 58(2). The Monopolies and Mergers Commission was dissolved on 1 April 1999 and its functions transferred to the Competition Commission: Competition Act 1998 s 45(3). In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission: s 45(4). As to the Monopolies and Mergers Commission see COMPETITION vol 18 (2009) PARA 9.

10 'Satisfied' means satisfied by such evidence as the Secretary of State may require: Fair Trading Act 1973 s 58(6).

11 *Ibid* s 58(3).

12 *Ibid* s 58(3)(a).

13 *Ibid* s 58(3)(b). If the Secretary of State is satisfied that the newspaper concerned in the transfer has an average circulation per day of publication of not more than 50,000 copies, he may give his consent to the transfer without requiring a report from the Commission: s 58(4) (amended by the Fair Trading Act (Amendment) (Newspaper Mergers) Order 1995, SI 1995/1351, art 2). See note 6 *supra*.

14 Fair Trading Act 1973 s 59(1). The Secretary of State must not make a reference to the Commission under s 59(1) where under s 58(3) he is required to give his consent unconditionally without requiring a report under s 59; or where under s 58(3) or (4) he has power to give his consent without requiring such a report from the Commission, and determines to exercise that power, or where the application is expressed to depend on the operation of s 58(3) or (4): s 59(2).

15 See *ibid* s 60(1) (amended by the Companies Act 1989 s 153, Sch 20 para 2). The Secretary of State must not allow any further period for a report on such a reference except on representations made by the Commission, and on being satisfied that there are special reasons why the report cannot be made within the period specified in the newspaper merger reference; and the Secretary of State must allow only one such further period on any one reference, and no such further period must be longer than three months: Fair Trading Act 1973 s 60(2) (amended by the Companies Act 1989 Sch 20 para 2).

16 Fair Trading Act 1973 s 59(3). The Commission has also taken into account the effect on the concentration of ownership and competition for readers and advertisers at a national, regional and local level and the employment and efficiency aspects of the merger, see for example, the *Report of the Competition Commission on the proposed transfers of the newspapers of Portsmouth and Sunderland Newspapers plc to Johnston Press plc, Newsquest (Investments) Ltd and News Communications and Media plc* (Cm 4358) (1999).

See also the Report of the Monopolies and Mergers Commission on the transfer of the West Somerset Free Press to the Bristol United Press Ltd: *West Somerset Free Press and Bristol United Press Ltd* (HC Paper (1979-80) no 546).

17 le under the Fair Trading Act 1973 s 60(2) (as amended) (see note 15 supra): see s 60(3) (as amended: see note 18 infra).

18 Fair Trading Act 1973 s 60(3) (amended by the Companies Act 1989 Sch 20 para 2).

## UPDATE

### 445 Prohibition of certain newspaper mergers

TEXT AND NOTES--Fair Trading Act 1973 ss 57-62 repealed: Communications Act 2003 s 373. The Communications Act 2003 Pt 5 Ch 2 (ss 373-389, Sch 16) integrates treatment of newspaper mergers with the merger regime of the Enterprise Act 2002.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(iii) Registration of Newspapers/446. Duty of printers and publishers to make returns.

### (iii) Registration of Newspapers

#### 446. Duty of printers and publishers to make returns.

The printers and publishers<sup>1</sup> for the time being of every newspaper<sup>2</sup> must make or have made an annual return to the Registry Office<sup>3</sup> during the month of July containing specified particulars<sup>4</sup>. The registrar must register every return in the register of newspaper proprietors kept at the Registry Office<sup>5</sup>.

Fees are payable in respect of the receipt and entry of returns in the register, and for the inspection of the register of newspaper proprietors<sup>6</sup>.

1 As to the meaning of 'publisher' see PARA 401 note 1 ante.

2 'Newspaper' means any paper containing public news, intelligence or occurrences, or any remarks or observations printed in it for sale, and published in England or Northern Ireland periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts or numbers; and also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements: Newspaper Libel and Registration Act 1881 s 1; Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, art 2.

Newspapers belonging to joint stock companies (see COMPANIES) are excluded from the provisions as to the registration of newspaper proprietors in the Newspaper Libel and Registration Act 1881: s 18.

3 'Registry Office' means the principal office for the time being of the registrar or such other office as the Secretary of State from time to time appoints: *ibid* s 1. The statutory provisions originally referred to the Board of Trade whose functions have now been transferred to the Secretary of State: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505.

4 Newspaper Libel and Registration Act 1881 s 9 (amended by the Statute Law Revision Act 1894). As to the specified particulars see PARA 447 post. The business of registration is carried on at the Companies Registration Office, Companies' House, Crown Way, Maindy, Cardiff, CF4 3UE.



5 Newspaper Libel and Registration Act 1881 s 13. All persons are at liberty to search and inspect this register during the hours of business, and may require a copy of any entry, or an extract from the register: s 13.

6 Ibid s 14. The fees are determined by the Secretary of State with Treasury approval: s 14. For fees directed to be paid under this provision see the Board of Trade Minute dated 10 November 1881, SR & O Rev 1948, XVI, p 883; and the Decimal Currency Act 1969 ss 9, 10, Sch 1. Fees are now collected in money: Companies Registration Office (Fees) (No 2) Order 1963, SI 1963/596, art 2. The prescribed forms on which returns are to be made must be sent to the registrar at the office referred to in note 4 supra.

## UPDATE

### 446 Duty of printers and publishers to make returns

TEXT AND NOTES 1-4--Reference 'to the Registry Office' is now 'to the registrar': Newspaper Libel and Registration Act 1881 s 9 (amended by SI 2009/1941).

NOTE 2--Newspaper Libel and Registration Act 1881 s 18 amended: SI 2009/1941.

NOTE 3--Definition of 'registry office' omitted: Newspaper Libel and Registration Act 1881 s 1 (amended by SI 2009/1941).

NOTE 5--Newspaper Libel and Registration Act 1881 s 13 substituted: SI 2009/1941.

TEXT AND NOTE 6--Newspaper Libel and Registration Act 1881 s 14 omitted: SI 2009/1941. See the Registrar of Companies (Fees) (Limited Partnerships and Newspaper Proprietors) Regulations 2009, SI 2009/2392, Sch 1 para 6.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(iii) Registration of Newspapers/447. Particulars required to be registered.

### 447. Particulars required to be registered.

The particulars of newspapers required to be registered are the title<sup>1</sup> of the newspaper<sup>2</sup> and the names of all the proprietors<sup>3</sup>, together with their respective occupations, places of business, if any, and places of residence<sup>4</sup>.

Where in the opinion of the Secretary of State it would be inconvenient to register the names of all the proprietors owing to the shares being minutely sub-divided, or to other special circumstances, he may authorise a registration in the name or names of one or more responsible representative proprietors<sup>5</sup>.

1 As to the property in the name or title of a newspaper see PARA 439 ante.

2 For the meaning of 'newspaper' see PARA 446 note 2 ante.

3 'Proprietor' means and includes, as well as the sole proprietor, where the proprietorship is divided, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the paper as between themselves and the persons similarly representing or responsible for the other shares or interests: Newspaper Libel and Registration Act 1881 s 1.

4 Ibid s 9. For the form see Sch A: s 9. 'Place of residence' includes the street, square or place where the person to whom it refers resides, and the number, if any, or other designation of the house in which he resides: s 1.

5 Ibid s 7. The statutory provisions originally referred to the Board of Trade whose functions have now been transferred to the Secretary of State: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505. See PARA 446 note 3 ante.

## **UPDATE**

### **447 Particulars required to be registered**

NOTE 4--Newspaper Libel and Registration Act 1881 s 9 amended: SI 2009/1941.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(iii) Registration of Newspapers/448. Change of proprietorship.

### **448. Change of proprietorship.**

There is no obligation upon anyone to register a change of proprietorship of a newspaper which occurs between any two annual returns<sup>1</sup>, but any party to a transfer of or dealing with any share or interest by which anyone ceases to be a proprietor or any new proprietor is introduced may make or cause to be made a return setting out the names of the persons ceasing to be proprietors and the names of the new proprietors, together with their occupations and places of business and residence<sup>2</sup>.

1 As to the duty to make returns see PARA 446 ante. For the meaning of 'proprietor' see PARA 447 note 3 ante.

2 Newspaper Libel and Registration Act 1881 s 11. For the form of return see Sch B: s 11. For the meaning of 'place of residence' see PARA 447 note 4 ante.

## **UPDATE**

### **448 Change of proprietorship**

NOTE 2--Newspaper Libel and Registration Act 1881 s 11 amended: SI 2009/1941.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(iii) Registration of Newspapers/449. False or misleading returns.

### **449. False or misleading returns.**

Any person who knowingly and wilfully makes or causes to be made a return<sup>1</sup> which names any person as a newspaper proprietor<sup>2</sup> who is not a proprietor, or which contains any misrepresentation, or from which there is an omission which renders the return misleading, is liable to a penalty not exceeding level 3 on the standard scale<sup>3</sup>. The same penalty is imposed on any proprietor who knowingly and wilfully permits a return to be made which is misleading in so far as the particulars of his name, occupation, place of business or place of residence are concerned<sup>4</sup>.

1 As to the duty to make returns see PARA 446 ante.

2 For the meaning of 'proprietor' see PARA 447 note 3 ante.

3 Newspaper Libel and Registration Act 1881 s 12 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 412 note 1 ante.

4 Newspaper Libel and Registration Act 1881 s 12. For the meaning of 'place of residence' see PARA 447 note 4 ante.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(iii) Registration of Newspapers/450. Penalty for omission to register.

#### **450. Penalty for omission to register.**

If no return to the register of newspaper proprietors<sup>1</sup> is made within one month from the appointed time<sup>2</sup>, then each printer and publisher<sup>3</sup> is liable to a penalty not exceeding level 2 on the standard scale<sup>4</sup>, recoverable in summary proceedings<sup>5</sup>, and may be directed by a summary order<sup>6</sup> to make the return within a specified time<sup>7</sup>.

1 As to the duty to make returns see PARA 446 ante.

2 Ie within one month of July: see PARA 446 ante.

3 'Publisher' is not defined in the Newspaper Libel and Registration Act 1881. As to the meaning of 'publisher' generally see PARA 401 note 1 ante.

4 As to the standard scale see PARA 412 note 1 ante.

5 As to the recovery of penalties see PARA 449 ante; and MAGISTRATES.

6 As to such orders see the Newspaper Libel and Registration Act 1881 s 16 (as amended).

7 Ibid s 10 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(1) NEWSPAPERS/(iii) Registration of Newspapers/451. Proof of entries in and inspection of register.

#### **451. Proof of entries in and inspection of register.**

An entry in or extract from the newspaper proprietors' register<sup>1</sup> may be proved in all proceedings, civil or criminal, by the production of a copy of the entry or extract, certified by the registrar<sup>2</sup> or his deputy, or under the official seal of the registrar, without proof of the signature to the certificate or of the seal affixed to it; and a certified copy of an entry or extract is sufficient prima facie evidence of everything it contains<sup>3</sup>.

1 As to the duty to make entries in the register see PARA 446 ante.

2 As to the registrar see PARA 446 note 3 ante.

3 Newspaper Libel and Registration Act 1881 s 15. As to fees see PARA 446 ante.

#### **UPDATE**

## 451 Proof of entries in and inspection of register

TEXT AND NOTES--Newspaper Libel and Registration Act 1881 s 15 substituted: SI 2009/1941.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/ (2) PROPRIETORS, EDITORS AND JOURNALISTS/452. Duties and powers of editor.

## (2) PROPRIETORS, EDITORS AND JOURNALISTS

### 452. Duties and powers of editor.

Generally an editor is the person who superintends the publication of any literary work. In the case of newspapers and periodicals, such a person is usually appointed by the proprietor to be responsible for the literary part of the journal, but no general statement can be made as to his duties or authority, because these must depend upon the contract entered into in each individual case. The mere fact that a person is appointed editor of a newspaper does not give him control of the conduct of the paper or of the material to be included, and, in the absence of special stipulations in the contract giving him control, he is subject to the directions of the proprietor<sup>1</sup>. On the other hand, any undue interference with a person who holds a general appointment as editor in the performance of his duties may amount to a breach of contract<sup>2</sup>.

The question whether a person is discharging editorial duties or is merely a contributor is a question of fact depending upon the terms of the contract of engagement, the nature of the work done and the mode of payment<sup>3</sup>.

1 *Crookes v Petter* (1860) 3 LT 225.

2 In neither case is it a matter for an injunction. 'The matter resolves itself into this: if the defendants [the proprietors] unduly interfere with the functions of the editor, or he improperly introduces matter which is injurious to the journal, the best course is to have it settled by an action at law, and to leave it to a jury to determine the amount of the damages': *Crookes v Petter* (1860) 3 LT 225 at 227 per Romilly MR.

3 *Landa v Greenberg* (1908) 24 TLR 441; applied in *Hines v Winnick* [1947] Ch 708, [1947] 2 All ER 517. See also *Modern Fiction Limited v Fawcett* [1949] 66 RPC 230.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/ (2) PROPRIETORS, EDITORS AND JOURNALISTS/453. Editor's authority as agent of proprietor.

### 453. Editor's authority as agent of proprietor.

The authority of an editor as agent of the proprietor of a newspaper or similar publication depends upon the terms of his employment. The position itself confers no authority upon its holder, but the editor is presumed to be acting as agent of the proprietor in the selection of matter to be inserted in the publication<sup>1</sup>.

Usually the editor is empowered to make contracts with contributors, but such contracts are made on behalf of the proprietor, and the benefit belongs to the proprietor, and all manuscripts

and letters received from correspondents and contributors which come into the hands of the editor are the proprietor's property<sup>2</sup>.

1 *R v Walter* (1799) 3 Esp 21. See also generally AGENCY.

2 *Hogg v Kirby* (1803) 8 Ves 215; *Lamb v Evans* [1892] 3 Ch 462 (affd [1893] 1 Ch 218, CA).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/ (2) PROPRIETORS, EDITORS AND JOURNALISTS/454. Liabilities of editor and proprietor.

#### **454. Liabilities of editor and proprietor.**

The editor of a newspaper is responsible for all illegal matter which appears in the paper<sup>1</sup>, and so also is the proprietor<sup>2</sup>. Therefore, if proceedings are commenced against the editor, it is a matter of common interest between them, and the proprietor may undertake the defence<sup>3</sup>. Where the proprietor of a newspaper is a limited company, neither the editor nor the chief reporter is an officer or member of the company so as to render him liable to be interrogated by an opposing party in an action brought by or against the company<sup>4</sup>.

If the proprietor of a newspaper invites readers to send inquiries on, for example, financial matters, he must use reasonable care in giving answers to those inquiries, otherwise he may be liable for loss arising from a negligent answer<sup>5</sup>.

A contract by the proprietor of a newspaper, which he holds out as giving honest advice on certain matters, not to comment on a company concerned in those matters is unenforceable as being against public policy in that it is not consistent with the proper conduct of the newspaper in the public interest<sup>6</sup>.

1 As to the publication of illegal matter see PARA 417 et seq ante. The proprietor, editor or publisher of a newspaper commits an offence where an advertisement relating to surrogacy services is published: see the Surrogacy Arrangements Act 1985 s 3; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 518.

2 *Colburn v Patmore* (1834) 1 Cr M & R 73, where the court expressed the opinion that a newspaper proprietor who was convicted and fined for a libel contained in the newspaper by the editor without the proprietor's knowledge could not recover the amount of the fine from the editor.

3 *Breay v Royal British Nurses' Association* [1897] 2 Ch 272, CA.

4 *Murray v Northern Whig Ltd* (1911) 46 ILT 77, CA, per Cherry LJ.

5 *De la Bere v Pearson Ltd* [1908] 1 KB 280, CA. Liability for negligent misstatements in providing answers to unsolicited inquiries depends on whether in all the circumstances it is established that there existed a duty to exercise proper care: see *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL. See also generally NEGLIGENCE; MISREPRESENTATION AND FRAUD.

6 *Neville v Dominion of Canada News Co Ltd* [1915] 3 KB 556, CA. See also CONTRACT vol 9(1) (Reissue) PARA 843.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/ (2) PROPRIETORS, EDITORS AND JOURNALISTS/455. Termination of employment of editor.

#### **455. Termination of employment of editor.**

In the absence of express terms in the contract of employment of an editor, a customary or reasonable notice to terminate the contract must be given<sup>1</sup>. What amounts to such notice is a question of fact to be determined on evidence adduced by the parties. The usual notice, in the case of an editor of an important daily newspaper, appears to be a year, but this custom, save in exceptional circumstances, does not extend to weekly newspapers, or to periodicals or reviews, or to new publications<sup>2</sup>. In addition to any contractual or reasonable notice of termination editors are also entitled to statutory protection against unfair dismissal<sup>3</sup>.

1 As to the termination of contracts of service generally see EMPLOYMENT vol 40 (2009) PARA 679. If the proprietor sells the newspaper as a going concern during the currency of the editor's contract then, in common with other employee contracts, the editor's contract of employment is likely to be transferred to the purchaser by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981, SI 1981/1794 (as amended). See also EMPLOYMENT vol 39 (2009) PARA 114.

2 *Grundy v Sun Printing and Publishing Association* (1916) 33 TLR 77, CA. See also *Holcroft v Barber and Watson* (1843) 1 Car & Kir 4; *Baxter v Nurse* (1844) 6 Man & G 935. In *Brennan v Gilbert-Smith* (1892) 8 TLR 284, the custom of giving 12 months' notice was not disputed, but in *Fox-Bourne v Vernon & Co Ltd* (1894) 10 TLR 647, the jury found that six months' notice was sufficient, refusing to accept evidence of a custom of giving 12 months' notice. In *Chamberlain v Bennett* (1892) 8 TLR 234, the jury accepted evidence of a custom entitling a sub-editor to six months' notice, but in *Baker v Mandeville* (1896) 13 TLR 71, three months was held to be reasonable notice for the editor of a financial periodical. See also *Landa v Greenberg* (1908) 24 TLR 441, where the plaintiff's engagement involved the performance of editorial and managerial functions outside the scope of an ordinary contributor, and it was agreed that three months would be a reasonable notice for her. See also generally EMPLOYMENT vol 40 (2009) PARA 690 et seq.

3 See generally the Employment Rights Act 1996 Pt X (ss 94-134) (as amended); and EMPLOYMENT vol 40 (2009) PARA 712 et seq. An editor may therefore be entitled to compensation for unfair dismissal, in addition to any damages for breach of contract, if the termination is not for a fair reason (such as conduct, capability or redundancy) or is not carried out using a fair procedure.

## UPDATE

### 455 Termination of employment of editor

NOTE 1--SI 1981/1794 replaced: Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/ (2) PROPRIETORS, EDITORS AND JOURNALISTS/456. Rights with regard to manuscript.

### 456. Rights with regard to manuscript.

The rights with regard to manuscripts of newspaper articles are the same as those with regard to books<sup>1</sup>.

1 See PARA 409 ante.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/ (2) PROPRIETORS, EDITORS AND JOURNALISTS/457. Journalists.

## 457. Journalists.

The relation between the proprietor of a newspaper and a journalist is that of employer and employee<sup>1</sup>.

A journalist who has contributed to a periodical under a nom de plume which has become identified with his work has a right to the use of the pseudonym as against the proprietor<sup>2</sup>.

1 See EMPLOYMENT vol 39 (2009) PARA 1 et seq. The chief reporter of a newspaper is not an officer or member of the company owning the newspaper: see PARA 454 ante. As to the reasonableness of a clause in an agreement for the employment of a reporter restricting him, after the termination of his employment, from being connected with any other newspaper business within a certain radius see *Sir WC Leng & Co Ltd v Andrews* [1909] 1 Ch 763, CA. See also EMPLOYMENT vol 39 (2009) PARA 19 et seq.

2 *Landa v Greenberg* (1908) 24 TLR 441; *Forbes v Kemsley Newspapers Ltd* [1951] 2 TLR 656. Cf *Hines v Winnick* [1947] Ch 708, [1947] 2 All ER 517. See also TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 313.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/458. Right to attend meetings.

## (3) PRIVILEGES AND CONTROL OF THE PRESS

### 458. Right to attend meetings.

Meetings of the following bodies are open to the public<sup>1</sup>, and representatives of the press are entitled to attend those meetings from which the public has not been excluded<sup>2</sup>:

- 18 (1) certain councils<sup>3</sup>;
- 19 (2) the parish meetings of rural parishes<sup>4</sup>;
- 20 (3) the Welsh Development Agency<sup>5</sup>;
- 21 (4) Health Authorities, except as regards the exercise of functions under the National Health Service (Service Committees and Tribunal) Regulations 1992<sup>6</sup> or any regulations amending or replacing those Regulations<sup>7</sup>;
- 22 (5) the Special Health Authority (if the order establishing a Special Health Authority so provides)<sup>8</sup>;
- 23 (6) any other body having power<sup>9</sup> to levy a rate<sup>10</sup>;
- 24 (7) regional and local flood defence committees<sup>11</sup>;
- 25 (8) advisory committees<sup>12</sup>;
- 26 (9) customer service committees<sup>13</sup>; and
- 27 (10) National Health Service trusts<sup>14</sup>.

Bodies established under any Act may be brought within the requirements of public admission to meetings by order of the appropriate minister<sup>15</sup>.

1 Ie under the Public Bodies (Admission to Meetings) Act 1960 s 1(1) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 641. The Public Bodies (Admission to Meetings) Act 1960 has been disappplied from principal councils: see s 1(1), Schedule (as amended); and the text and notes 3-14 infra. Access for the public and press to the meetings of principal councils and their committees, and to information relating to such meetings, is now governed by the Local Government Act 1972 Pt VA (ss 100A-K), Sch 12A (as added and amended). See also LOCAL GOVERNMENT vol 69 (2009) PARA 661et seq.

- 2 See the Public Bodies (Admission to Meetings) Act 1960 s 1(2).
- 3 le parish or community councils, the Council of the Isles of Scilly and joint boards or joint committees which discharge functions of any of those bodies (or of any of those bodies and of a principal council, within the meaning of the Local Government Act 1972, or a body falling within s 100J(1)(b) or (c) (as added)) (see LOCAL GOVERNMENT vol 69 (2009) PARA 667): Public Bodies (Admission to Meetings) Act 1960 s 1(2) s 2(1), Schedule para 1(a) (substituted by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 4). As to these councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq.
- 4 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(b). By virtue of the Local Government Act 1972 s 179(1), (4), this should now be construed as respects England, as a reference to the parish meeting of a parish, and as respects Wales, as a reference to the council of a community: see LOCAL GOVERNMENT vol 69 (2009) PARAS 34, 41.
- 5 Ibid Schedule para 1(ba) (added by the Government of Wales Act 1998 s 128, Sch 14 para 13).
- 6 le the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (as amended): see HEALTH SERVICES vol 54 (2008) PARA 619 et seq. As to Health Authorities see HEALTH SERVICES vol 54 (2008) PARA 75 et seq.
- 7 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(f) (substituted by the Health Authorities Act 1995 s 2(1), Sch 1 para 91).
- 8 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(g) (added by the Health and Social Services and Social Security Adjudications Act 1983 s 29, Sch 9 Pt I para 7; and substituted by the Health Authorities Act 1995 s 2(1), Sch 1 para 91). As to Special Health Authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.
- 9 le having the power within the meaning of the Public Works Loans Act 1875.
- 10 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(h) (amended by the Local Government (Access to Information) Act 1985 Sch 2 para 4) This does not include bodies to which the Local Government Act 1972 ss 100A-100D (as added and amended) apply, whether or not by virtue of s 100E or s 100J (both as added and amended) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 661-664, 667): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(h) (as so amended).
- 11 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(i) (added by the Water Act 1989 s 190, Sch 25 para 28). As to regional and local flood defence committees see WATER AND WATERWAYS vol 101 (2009) PARA 559 et seq.
- 12 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(j) (added by the Water Act 1989 Sch 25 para 28; and amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 1). The advisory committees must be established and maintained under the Environment Act 1995 s 12 or s 13 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 83-84): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(j) (as so added and amended).
- 13 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(k) (added by the Water Act 1989 s 190, Sch 25 para 28; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 10). The customer service committees must be maintained under the Water Industry Act 1991 s 28: Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(k) (as so added and amended).
- 14 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(l) (added by the Public Bodies (Admission to Meetings) (National Health Service Trusts) Order 1997, SI 1997/2763, art 2(2)). The National Health Service trusts must be established under the National Health Service and Community Care Act 1990 s 5(1) (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 155 et seq): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(l) (as so added). As to National Health Service trusts see HEALTH SERVICES vol 54 (2008) PARA 155 et seq.
- 15 Ibid s 2(3). 'Appropriate minister', in the case of any body, means the Minister of the Crown in charge of the government department concerned or primarily concerned with the matters dealt with by that body, but an order made under s 2(3) by any minister is effective, whether or not he is the appropriate minister: s 2(3). Such an order must be made by statutory instrument approved by a resolution of each House of Parliament: s 2(3). Bodies so added may be removed by a similar order: s 2(3). See the Public Bodies (Admission to Meetings) (National Health Service Trusts) Order 1997, SI 1997/2763.

## UPDATE

### 458 Right to attend meetings



TEXT AND NOTES 1-14--Also, heads (11) the Council for Healthcare Regulatory Excellence (Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(bca) (added by National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 21; substituted and renumbered by Health and Social Care Act 2008 Sch 10 para 3)); (12) the Care Council for Wales (1960 Act Schedule para 1(bd) (added by Care Standards Act 2000 Sch 1 para 23)); (13) the General Social Care Council (1960 Act Schedule para 1(be) (added by Care Standards Act 2000 Sch 1 para 23)); (14) the Commission for Healthcare Audit and Inspection (1960 Act Schedule para 1(bg) (added by Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 2)); (15) the Commission for Social Care Inspection (1960 Act Schedule para 1(bh) (added by Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 2)); (16) strategic health authorities (see HEALTH SERVICES vol 54 (2008) PARA 94 et seq) (1960 Act Schedule para 1(ea) (added by SI 2002/2469)); (17) primary care trusts (see HEALTH SERVICES vol 54 (2008) PARA 111 et seq), except as regards the exercise of functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (see HEALTH SERVICES vol 54 (2008) PARA 619 et seq) or any regulations amending or replacing those regulations (1960 Act Schedule para 1(gg) (added by Health Act 1999 Sch 4 para 1; and amended by SI 2002/2469)); (18) local health boards (1960 Act Schedule para 1(gh) (added by National Health Service Reform and Health Care Professions Act 2002 Sch 5 para 1)); and (19) the Wales Centre for Health (1960 Act Schedule para 1(m) (added by Health (Wales) Act 2003 Sch 3 para 1).

TEXT AND NOTE 5--Head (3) omitted: 1960 Act Schedule para 1(ba) repealed by the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226).

TEXT AND NOTES 6, 7--Head (4) omitted: 1960 Act Schedule para 1(f) repealed by the References to Health Authorities Order 2007, SI 2007/961.

NOTE 14--For 'the National Health Service and Community Care Act 1990 s 5(1)' now read 'the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18': Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(l) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 27).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/459. Facilities for the press.

#### **459. Facilities for the press.**

Where a meeting of a body is required to be open to the public<sup>1</sup> during the proceedings or any part of them there must, on request and on payment of postage or other necessary charge for transmission, be supplied for the benefit of any newspaper<sup>2</sup> a copy of the agenda for the meeting as supplied to members of the body (but excluding, if thought fit<sup>3</sup>, any item during which the meeting is likely not to be open to the public), together with such further statements or particulars, if any, as are necessary to indicate the nature of the items included or, if thought fit<sup>4</sup> in the case of any item, with copies of any reports or other documents supplied to members of the body in connection with the item<sup>5</sup>. While the meeting is open to the public<sup>6</sup>, duly accredited representatives of newspapers attending for the purpose of reporting the proceedings for those newspapers must so far as practicable be afforded reasonable facilities

for taking their report, and, unless the meeting is held in premises not belonging to the body or not on the telephone, for telephoning the report at their own expense<sup>7</sup>.

However, the body or committee is not required to permit the taking of photographs of any proceedings, to permit the use of any means to enable persons not present to see or hear the proceedings (whether at the time or later), or to permit the making of any oral report on any proceedings as they take place<sup>8</sup>.

1     le by virtue of the Public Bodies (Admission to Meetings) Act 1960 s 1(1) (as amended): see PARA 458 ante. As to access for the public and the press to meetings of certain bodies, and facilities for the press provided in that context, see the Local Government Act 1972 ss 100A-100K (as added and amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 661 et seq.

2     Any reference to a newspaper applies also to a news agency which systematically carries on the business of selling and supplying reports or information to newspapers, and to any organisation which is systematically engaged in collecting news for sound or television broadcasts or for programme services (within the meaning of the Broadcasting Act 1990 ss 2(5), 126(1), 201 (all as amended)) (see TELECOMMUNICATIONS AND BROADCASTING) other than sound or television broadcasting services: Public Bodies (Admission to Meetings) Act 1960 s 1(7) (amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 5).

3     The responsibility for deciding what is to be supplied is not allocated with certainty. The local authority may, however, remedy this by delegating the responsibility to a committee, sub-committee or officer under the Local Government Act 1972 s 101(1): see LOCAL GOVERNMENT vol 69 (2009) PARA 493.

4     See note 3 supra.

5     Public Bodies (Admission to Meetings) Act 1960 s 1(4)(b).

6     This applies during those parts of the proceedings not the subject of an exclusion resolution under the Public Bodies (Admission to Meetings) Act 1960 s 1(2): see PARA 458 ante. Representatives of the newspapers and news agencies are members of the public in so far as the right to attend a meeting is concerned; the provisions here discussed afford certain additional rights or facilities for newspapers, news agencies and accredited representatives.

7     Ibid s 1(4)(c). For this purpose the meeting place, if owned by the main body, will in the case of committee meetings be deemed to belong to the committee: s 2(1); Local Government Act 1972 s 100(3). The same will apply where the meeting place is owned by one of the local authorities appointing a joint committee.

8     Public Bodies (Admission to Meetings) Act 1960 s 1(7).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/460. Right to remain in court.

#### **460. Right to remain in court.**

Bona fide representatives of a newspaper or news agency have a right to remain in a court which has been cleared by virtue of the powers given by the Children and Young Persons Act 1933 while a child or young person is giving evidence in any proceedings in relation to an offence against, or conduct contrary to, decency or morality<sup>1</sup>, and they have also a right to be present at any sitting of a youth court constituted under that Act<sup>2</sup>. Otherwise, the rights of the press to attend proceedings in court and elsewhere are the same as those of the general public<sup>3</sup>.

1     Children and Young Persons Act 1933 s 37(1). This privilege does not override the power of a court to hear a case in camera: see s 37(2). Under the Civil Procedure Rules in camera is referred to as in private. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1300.

2 Ibid s 47(2)(c) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 40; and the Crime and Disorder Act 1998 ss 47(7), 120(2), Sch 10). As to restrictions upon newspaper reports see PARAS 434-437 ante, 461 post.

3 As to the right to hear judicial proceedings in camera see COURTS; MAGISTRATES. See note 1 supra.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/461. General restrictions on reporting.

#### **461. General restrictions on reporting.**

Save as otherwise provided<sup>1</sup>, it is unlawful<sup>2</sup> to publish<sup>3</sup> in Great Britain<sup>4</sup> a written report, or to include in a relevant programme<sup>5</sup> for reception in Great Britain a report of any committal proceedings in England and Wales containing any matter other than certain specified information<sup>6</sup>.

Unless authorised by a direction given by a judge<sup>7</sup>: (1) after an allegation has been made that a person has been the victim of a rape offence, neither the name nor the address of the person nor a still or moving picture of her or him may be published in England and Wales in a written publication available to the public, or included in a relevant programme<sup>8</sup> for reception in England and Wales, during that person's lifetime, if that is likely to lead members of the public to identify that person as an alleged victim of such an offence<sup>9</sup>; and (2) after a person is accused of a rape offence, no matter likely to lead members of the public to identify a person as the complainant in relation to that accusation may be published in England and Wales in a written publication available to the public, or included in a relevant programme for reception in England and Wales, during that person's lifetime<sup>10</sup>.

1 Ie by the Magistrates' Courts Act 1980 s 8(2) (as amended), (3), (8): see s 8(1).

2 As to punishment see CRIMINAL LAW, EVIDENCE AND PROCEDURE.

3 'Publish', in relation to a report, means publish it, either by itself or as part of a newspaper or periodical, for distribution to the public: Magistrates' Courts Act 1980 s 8(10).

4 For the meaning of 'Great Britain' see PARA 401 note 19 ante.

5 'Relevant programme' means a programme included in a programme service (within the meaning of the Broadcasting Act 1990 s 201 (see TELECOMMUNICATIONS AND BROADCASTING): Magistrates' Courts Act 1980 s 8(10) (definition added by the Broadcasting Act 1990 s 203(1), (3), Sch 20 para 29(1), Sch 21).

6 Magistrates' Courts Act 1980 s 8(1) (amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 29). The Magistrates' Courts Act 1980 s 8(1) (as amended) is in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports and proceedings of magistrates' and other courts: s 8(7). Restrictions are imposed by eg the Criminal Justice Act 1925 s 41 (as amended) (see PARA 437 ante); the Judicial Proceedings (Regulation of Reports) Act 1926 (see COURTS); the Children and Young Persons Act 1933 s 39 (as amended) (see PARA 436 ante); and the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1), (3) (as amended) (see COURTS). These restrictions also apply to the mode of trial prescribed by the Magistrates' Courts Act 1980 ss 18-26 (as amended): see s 8(8); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 1255-1258; MAGISTRATES.

As to restrictions on reporting see the Magistrates' Courts Act 1980 s 8 (as amended). As to restrictions on reporting applications for dismissal see the Criminal Justice Act 1987 s 11 (as substituted); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1257.

7 Sexual Offences (Amendment) Act 1976 s 4(1) (substituted by the Criminal Justice Act 1988 s 158(1), (2)). The Sexual Offences (Amendment) Act 1976 s 4(1) (as substituted and amended) expressly preserves the right to publish or include in a relevant programme matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence. Nothing in this provision affects any prohibition or restriction imposed by virtue of any

other enactment upon a publication or upon matter included in a relevant programme; and a direction in pursuance of this provision does not affect the operation of s 4(1) (as substituted and amended) at any time before the direction is given: see s 4(7) (as amended). See CONTEMPT OF COURT vol 9(1) (Reissue) PARA 430.

As to the lifting of reporting restrictions see s 4(2), (3) (as amended), s 4(4). As to other restrictions as reporting civil and criminal proceedings see CONTEMPT OF COURT vol 9(1) (Reissue) PARAS 430-431. As to publication of matters exempted from disclosure in court see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 432. See also *Brown v DPP* (1998) Times, 26 March.

8 For the meaning of 'relevant programme' see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 430.

9 Sexual Offences (Amendment) Act 1976 s 4(1)(a) (as substituted (see note 7 supra); and amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 26(1); and the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 36(2)(a)).

10 Sexual Offences (Amendment) Act 1976 s 4(1)(b) (as substituted (see note 7 supra); and amended by the Broadcasting Act 1990 Sch 20 para 26(1); and the Criminal Justice and Public Order Act 1994 Sch 10 para 36(2) (b)). As to restrictions on reporting regarding the anonymity of victims of a rape offence see the Sexual Offences (Amendment) Act 1976 ss 4 (as substituted and amended), 5 (as amended).

## UPDATE

### 461 General restrictions on reporting

TEXT AND NOTES 7-10--1976 Act ss 4, 5 repealed: Youth Justice and Criminal Evidence Act 1999 ss 48(b), 67(3), Sch 2 para 4, Sch 6. As to reporting directions in relation to adult witnesses in criminal proceedings, see the Youth Justice and Criminal Evidence Act 1999 s 46; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1302.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/462. Disclosure of sources.

### 462. Disclosure of sources.

No court<sup>1</sup> may require a person to disclose, nor is any person guilty of contempt of court<sup>2</sup> for refusing to disclose, the source of information contained in a publication<sup>3</sup> for which he is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime<sup>4</sup>.

1 For the meaning of 'court' see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 410.

2 As to the development of contempt of court see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 403.

3 For the meaning of 'publication' see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 412.

4 Contempt of Court Act 1981 s 10. Formerly, the position was that a journalist had no privilege entitling him as of right to refuse to disclose the source of his information; and an interrogator no absolute right to require disclosure; the question must be relevant, and must serve a useful purpose in relation to the proceedings: see *A-G v Mulholland* [1963] 2 QB 477, [1963] 1 All ER 767, CA. See also *A-G v Clough* [1963] 1 QB 773, [1963] 1 All ER 420.

This provision also applies, by analogy to the question whether a journalist has a 'reasonable excuse' under the Financial Services Act 1986 s 178(2) (see COMPANIES) for refusing to disclose his sources to inspectors investigating 'insider dealing': *Re An Inquiry Under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660, [1988] 1 All ER 203, HL. For proceedings in which a fine of £20,000 was imposed on the journalist in respect of the contempt see *Re An Inquiry under the Company Securities (Insider Dealing) Act 1985* (1988) Times, 27 January.

See also *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339 at 349-350, [1984] 3 All ER 601 at 610-611, HL, per Lord Diplock (disclosure necessary in interests of national security); *Maxwell v Pressdram Ltd* [1987] 1 All ER 656, [1987] 1 WLR 298, CA (disclosure not necessary despite relevance to issue of aggravated damages); *Chief Constable of Leicestershire Constabulary v Garavelli* [1997] EMLR 543 (disclosure not necessary in interests of justice); *Saunders v Punch Ltd (t/a Liberty Publishing)* [1998] 1 All ER 234, [1998] 1 WLR 986 (information protected by legal professional privilege); *Camelot Group plc v Centaur Communications Ltd* [1999] QB 124, [1998] 1 All ER 251, CA (disclosure necessary to enable employer to identify disloyal employee). See also *Special Hospitals Service Authority v Hyde* (1994) 20 BMLR 75. As to the refusal to disclose sources of information contained in a publication see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 408. As to the data protection principles see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 507 et seq.

## UPDATE

### 462 Disclosure of sources

NOTE 4--Financial Services Act 1986 repealed: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/463. Other rights of the press.

### 463. Other rights of the press.

Apart from the rights which have been conferred by statute the only special legal rights of the press<sup>1</sup> are those relating to the law of libel<sup>2</sup> where certain statutory defences are available to newspapers<sup>3</sup>. The press has no special legal rights to enter private property<sup>4</sup>.

1 The freedom of the press is protected by public opinion rather than by any express provisions of the law. However, it was provided by the Supplies and Services (Defence Purposes) Act 1951 s 1(2) (repealed), that nothing in that provision or in the Supplies and Services (Transitional Powers) Act 1945 (repealed, so far as here relevant) 'shall be held to authorise the suppression or suspension of any newspaper, periodical, book or other publication'.

2 The privileges of the press in relation to the law of libel are fully dealt with in LIBEL AND SLANDER vol 28 (Reissue) PARA 82 et seq.

3 As to apology and payment into court by newspapers and periodicals see LIBEL AND SLANDER vol 28 (Reissue) PARAS 160-164.

4 English law does not, it seems, protect a person from the invasion of his privacy unless some other recognised legal right is infringed. However see *Monson v Tussauds Ltd* [1894] 1 QB 671 at 687, CA, per Lord Halsbury; *Sports and General Press Agency Ltd v Our Dogs Publishing Co Ltd* [1916] 2 KB 880 (affd [1917] 2 KB 125, CA).

Halsbury's Laws of England/PRESS, PRINTING AND PUBLISHING (VOLUME 36(2) (REISSUE))/2. NEWSPAPERS AND THE PRESS/(3) PRIVILEGES AND CONTROL OF THE PRESS/464-500. Control of the press.

### 464-500. Control of the press.

With exceptions<sup>1</sup>, the press is subject to the ordinary law. A further degree of control is exercised by the Press Complaints Commission which is a non-statutory body set up by the

newspaper industry itself on the recommendation of the Calcutt Committee<sup>2</sup>. The Commission replaced the Press Council<sup>3</sup>. The Press Complaints Commission is an independent body on which sit sixteen members, nine being wholly unconnected with the press (including the current Chairman, Lord Wakeham) and seven being senior editors drawn from across the newspaper and magazine publishing industry. Members are appointed by an independent Appointments Commission, chaired by Lord Wakeham. A Code of Practice was published for the Press Complaints Commission to uphold. Complaints relating to breaches of the Code of Practice (for example invasions of privacy, misrepresentation, inaccuracy, harassment or other objectionable conduct including that relating to vulnerable people) by newspapers or persons employed by them may be submitted to the Commission for investigation and potential remedy<sup>4</sup>. The service is free of charge.

1 See PARAS 417-418 ante.

2 See the *Report of the Committee on Privacy and Related Matters* (Cmd 1102) (1990).

3 See the *Report of the Royal Commission on the Press* (Cmd 7700) (1949).

4 See *R v Press Complaints Commission, ex p Stewart-Brady* [1997] EMLR 185, 9 Admin LR 274, CA (application for judicial review of Press Complaints Commission's decision not to censure a newspaper that published a photograph of the applicant taken with a long-lens camera).

## **UPDATE**

### **464-500 Control of the press**

NOTE 4--Press Complaints Commission has level of discretion to determine complaints and courts will not automatically interfere: *R (on the application of Ford) v Press Complaints Commission* [2001] EWHC 683 (Admin), [2002] EMLR 95.